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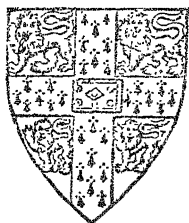
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# CABINET GOVERNMENT

BY

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## Preface

The purpose of this book can be stated simply, though its execution has not always been easy. I have sought to explain what "His Majesty's Government" is and how it functions. I have been concerned, therefore, with what is known traditionally though quite inappropriately as the "executive" side of the British Constitution. This will explain why Parliament is relegated to a single chapter, and why Parties are mentioned only incidentally. It is not my intention to minimise either the part played by the House of Commons or the importance of the party system. I think that I have given emphasis to both. But in this book I survey the Constitution from the angle of the Government. Parliament appears, therefore, as a forum for the criticism of the Government, and party as the means by which a Government achieves power. Parliament and the party structure as parts of the machinery of government are different subjects about which I hope to write later.

Even in respect of the Government I have imposed upon myself a limitation. I have been concerned with politics and not with detailed administration. Accordingly, I have explained only in general terms the distribution of functions among the Departments, though I have emphasised that the British Constitution has ceased to contemplate a mere division of administrative duties among homogeneous Departments under responsible ministers. The chapters on the Administrative System is therefore only a general survey; and though I have included a more systematic statement in Appendix III, it does not pretend to be much more than a catalogue. For the same reason, the detailed organisation and methods of operation of the Civil Service have been omitted. I have been concerned with the political part of the administrative system—with that part of it, in other words, with which ministers are primarily concerned.

The size of the present book indicates that these limitations were essential; and they have enabled me to concentrate on the issues of widest general interest. A word of caution is however necessary. Considerable space has been given to the methods by which difficulties

of relationships are overcome. The abnormal necessarily needs more discussion than the normal, but it must not on that account be assumed that the abnormal is the normal. For instance, the normal methods of inter-departmental relationship are not in the least complicated. Yet because difficulties sometimes arise, it has been necessary to illustrate both their character and the means by which they are overcome. Again, during the last two hundred years the question of creating peers to enable the Government to overcome the opposition of the House of Lords has only twice been raised with any urgency. Yet because the question may possibly arise in the future it has been necessary to treat fully of the precedents of 1832 and 1911. Indeed, the necessity for quoting precedents has considerably expanded the size of the volume. This is noticeable particularly in the second and third chapters, which seem overloaded with examples, and which consequently appear to me—though, of course, I am no judge—to be less readable than most of the later chapters. The reason is that I have had to provide not only a more or less readable survey of this part of the Constitution, but also a work of reference. I have, however, sought to make the second aim less incompatible with the first by including in Appendix I a chronological survey of British Governments since 1832 and in Appendix II the list of the present Government.

The technical question as to when a precedent creates a rule and what precedents may now be regarded as of value is discussed in Chapter I. The reading upon which this book is founded began with the purchase of two volumes of memoirs on York Station some ten years ago. Desultory reading and the teaching of English Constitutional History convinced me that the Constitution had so altered since the first Reform Act that few of the precedents before that date bore any relation to the modern Constitution. In order to assure myself that my impression was correct, I made a particular study of the period of transition, and published the results in two articles in *Economica* in 1931 and 1932. Thereafter, I devoted myself to a systematic reading of the material since 1832.

The first chapter explains, also, some of the difficulties of ascertaining the modern practice of government. The most important parts of the

Cabinet system function in secret. Information is rarely made available until the persons concerned in particular events are dead. The constitutional lawyer is apt, therefore, to be a generation behind the times. A constitutional lawyer at the London School of Economics is perhaps more fortunate than most of his colleagues. He works in a community whose business it is to study the problems of government, so that every published item of political information—and occasionally an item which is not published—is discussed from every conceivable point of view. Moreover, he has on the one hand Westminster and Whitehall and on the other hand the Courts of Justice and the Temple, so that he is able to maintain some contact with the major institutions of government. Though ministers, ex-ministers and civil servants are the embodiment of discretion, there is nothing to prevent them from discussing their methods as distinct from the particular problems with which they are concerned. Consequently, I have sometimes been able to correct the results of my reading and observation by casual conversations with persons possessing special knowledge. I cannot hope that all my assertions are accurate. I would draw particular attention to Chapters XI–XIII as containing statements which later information, if available, might possibly have caused to be modified. References have been inserted wherever material has been taken from a published source. For all other assertions I take sole responsibility.

The book seeks to expound and not to criticise. In order to expound it has been necessary to draw conclusions: but no statement is intended as a criticism except where it is considered that an action was not in accordance with constitutional practice. In particular, I have tried to exclude all elements of personal bias. I am too experienced in watching the consequences of unconscious bias in others who think that they are acting impartially to believe that I have wholly succeeded. Indeed, I have explained the peculiar problem of the constitutional lawyer's bias in Chapter I. In the main, however, the book contains statements of fact, and I have tried to exclude subjective elements in the choice of facts.

I have for years made myself a nuisance to a host of friends. I am much indebted to those who have discussed it with me and to those who have read portions of the book in proof. I am particularly



indebted to my colleagues, Sir William Beveridge, Professor H. J. Laski, Dr W. A. Robson, Mr K. B. Smellie, and Mr C. H. Wilson, all of the London School of Economics, Mr A. D. Hargreaves, of the University of Birmingham, and Dr E. C. S. Wade, of Gonville and Caius College, Cambridge.

In Appendix iv I have set out some valuable correspondence which appeared in *The Times* in September, 1913. I am most grateful to the proprietors of *The Times*, and to Lord Hugh Cecil and Professor J. H. Morgan, K.C., the survivors of those who took part in the discussion, for permission to reproduce this material.

A deputation of young students once asked me not to talk about deceased statesmen without explaining who they were; they referred particularly to Lord Palmerston. In quoting precedents I have necessarily referred to persons who were eminent in their day but who are at most names to the new generation. Moreover, even the most learned cannot always remember what office a particular statesman held at a particular moment and what authority he then had to expound constitutional principles. I have therefore inserted short biographical notes in Appendix v and have added the titles of the more important works in which documents or information are available.

The British Constitution is changing so rapidly that it is difficult to keep pace with it. The first draft of this book was completed in September, 1935, and the manuscript was sent to be printed early in 1936. I have made a few alterations in proof, but scope for amendment was necessarily limited. For the most part, therefore, the book sets out the system of Cabinet Government as I understood it at the end of 1935.

W. I. J.

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23 June 1936.

## CHAPTER I

# The British Constitution

### § 1. *Law and Practice.*

The Cabinet is the core of the British constitutional system. It is the supreme directing authority. It integrates what would otherwise be a heterogeneous collection of authorities exercising a vast variety of functions. It provides unity to the British system of government. If, therefore, a constituent assembly were to set out in a written document the present British Constitution, as it is actually operated, the Cabinet would be provided for in a prominent place. In the Cabinet and, still more, out of it, the most important person is the Prime Minister. It is he who is primarily concerned with the formation of a Cabinet, with the subjects which the Cabinet discusses, with the relations between the King and the Cabinet and between the Cabinet and Parliament, and with the co-ordination of the machinery of government subject to the control of the Cabinet. He, too, would be given a prominent place in a written Constitution.

It is a trite observation that there is no such Constitution. With us, "the law" is not an emanation from authorities set up or provided for by a written and formal document. It consists of the legislation of Parliament and the rules extracted from the decisions of judicial authorities. The powers of these bodies and the relations between them are the product of history. The constitutional authorities have claimed and have exercised law-making functions; and the people has acquiesced in their exercise. Revolution has helped to determine constitutional powers; but no revolution has produced a permanent written Constitution. It has produced, instead, the recognition of a rule that Parliament can legislate as it pleases and that what Parliament enacts is law. Where Parliament has legislated, the courts interpret and apply unless Parliament has otherwise provided. So far as Parliament has not legislated, the law is the body of rules developed and interpreted by the courts in

the exercise of a jurisdiction which these courts have secured by the acquiescence of people and Parliament.

Neither Parliaments nor the courts have provided for the Cabinet and the Prime Minister. The whole system of Cabinet government is founded not on laws but on practices. This does not mean that the existence of the most important constitutional authorities is contrary to law. It means only that they are not recognised by law. Neither the Cabinet nor the Prime Minister, as such, claims to exercise legal powers. They do not perform juridical acts; acts in the law. They determine only how other persons shall do such acts. Their decisions have legal consequences only because some person or body of persons—the King, the Privy Council, a minister, a statutory commission or the like—accepts them and carries them into effect. That person or body of persons accepts the decisions in fact, but is under no legal obligation to do so. What is more, it is a recognised rule that they ought to be accepted. There is a whole complex of rules outside “the law”, nowhere inconsistent with it but nowhere recognised by it, which can be stated with almost as much precision as the rules of law. Such rules have been set out by many authorities; they are discussed in Parliament; they are appealed to whenever dispute arises. They are called by various names, but are now commonly referred to as “constitutional conventions”.<sup>1</sup>

Such conventions are known to most Constitutions. Their importance depends primarily upon the age of the Constitution. The more recent the legal framework, the more likely it is to be in accord with modern conditions. The law will state the practice, and the practice will follow the law. But with us the legal framework is in many respects of ancient origin. Though many changes have been made by legislation, the principles of the law laid down by the courts were established nearly two and a half centuries ago. The change from monarchical to parliamentary government—or, if that be contentious, the recognition of the rights of Parliament—was incorporated into the law. Cabinet govern-

<sup>1</sup> Dicey, *Law of the Constitution* (8th edition), ch. xiv. The term was in constant use in the course of the constitutional difficulties of 1909–14; cf. *Life of Lord Oxford and Asquith*, I, p. 261. See also Jennings, *The Law and the Constitution*, ch. III; and *British Coal Corporation v. The King*, [1935] A.C. 500; and *Status of the Union Act*, 1934 (South Africa), s. 4 (3).

ment is the consequence of parliamentary government, but this change was not effected by legislation or recognised by the courts. It was an extra-legal development; and though the administrative legislation of Parliament and the administrative decisions of the courts subsume a Cabinet system, they neither establish nor formally recognise the rules that govern its operation.

The distinction between laws and conventions is not really of fundamental importance. A Constitution necessarily rests on acquiescence, whether it be established by referendum or tacit approval or by force. If an organised public opinion regards it as noxious it will be overthrown. If a Louis Napoleon or a Mussolini or a Hitler considers that he can induce or compel acquiescence in a change, he will not hesitate to overturn it merely because it is enacted as law. What is law and what is convention are primarily technical questions. The answers are known only to those whose business it is to know them. For the mass of the people it does not matter whether a rule is recognised by the judicial authorities or not. The technicians of government are primarily concerned. For the technicians, the difference appears to have three aspects.

In the first place, laws commonly have a greater sanctity, and there is greater reluctance to break them. This distinction is largely psychological. A rule of law has no merit merely because it is a rule of law. It is content and not form that matters. The fundamental conventions of Cabinet government are among the bases of the constitutional system. They are as important as the fundamental principles of the law. Their importance is, indeed, recognised. A person who proposed to substitute himself for the Cabinet—to make, that is, a change which could be brought about without any alteration of law—would be regarded as a dangerous revolutionary. Yet it cannot be doubted that, as between laws and conventions of equal constitutional importance, the law has the greater sanctity. Obedience to law is a fundamental duty; it is less frequently realised that obedience to conventions is also among the political virtues.

In the second place, it is the recognised duty of certain persons, especially of judges, to consider whether acts are legally valid and to

take such steps as they are able to see that the law is obeyed. While it is equally the duty of public authorities to obey the conventions, there is no formal method of determining when they are broken and to set in motion the train of consequences which this breach should bring. It is commonly said that laws are "enforced" and that conventions are not. This method of stating the case is a little too simple. It is difficult to conceive of law being enforced on a legislature whose powers of legislation are limited by law; it is difficult, indeed, to conceive of law being enforced against a government. For the judges do not enforce law, they merely declare it. The so-called enforcement is the application of sanctions by administrative officers who themselves obey law in applying them. Such sanctions might be applied to a subordinate officer or authority; it is difficult to imagine them applying to the central governmental body. In Great Britain, no sanctions could be applied against the King, nor, in most cases, against those "servants of the King" who are the principal governors, subject to the Cabinet and to Parliament, of the country. The efficacy of judicial decisions in important governmental matters lies not in enforcement, but in the precision of judgment, the recognised sanctity of law, and the power of public opinion. (To break the law is to do something clearly and obviously unconstitutional.) Unless there are special circumstances, such as a political or financial emergency, it is the subject of blame. It is possible to rouse public opinion to indignation. The breach would be proclaimed from every platform and blazoned forth in every headline. Breaches of constitutional conventions are less obvious and can be more easily clouded by a fog of misunderstanding. A judicial decision that a law has been broken leaves no room for argument, save as to its political justification; an accusation that a convention has been broken may be met by an accusation of factious and deliberate misrepresentation. The angel who has been formally condemned is no longer an angel; in the absence of formal condemnation he may protest his injured innocence.

In the third place, laws are for the most part precisely formulated. It is usually nobody's business to formulate conventions. They grow out of practice; they are modified by practice; and at any given time it may be difficult to say whether or not a practice has become a convention.

This, again, is not true of all conventions. Certain of the conventions governing the relations between Great Britain and the Dominions are set out in the preamble to the Statute of Westminster. Others are formally recorded in the reports of the Imperial Conferences. Here there is greater precision than with some of the rules of the common law. In any case, a convention that is fortified by a mass of precedents, such as those governing the relations between the King and the Government, is at least as closely defined as some of the rules of the common law. The conventional system of the British Constitution is in fact much like the system of the common law.

In short, the conventions are not really very different from laws. Indeed, it is frequently difficult to place a set of rules in one class or the other. For instance, the "law and custom of Parliament" which are set out in May's *Parliamentary Practice* are, to the strict lawyer, not "law"; yet they have every characteristic of law—including, in many cases, "enforcement". It is not easy to say whether the forms used in government, such as prerogative instruments, are prescribed by law or by convention.<sup>1</sup> From the reign of Edward III to 1921 the Convocations of the Church of England were summoned and dissolved at the same time as Parliament. In 1921 it was decided that this was a matter of practice and not of law and that they could legally be dissolved without a dissolution of Parliament.<sup>2</sup> For at least a century, again, the King's speeches to Parliament were approved in Council. It was at length decided that this, too, was a practice which could be dispensed with.<sup>3</sup> Possibly these practices were neither law nor convention, but at least they showed that the question of what is law and what is convention is not always capable of easy determination. A rule of law may, ultimately, be determined by a court; but until it is so determined it may be a matter of doubt.

## § 2. Conventions.

The fact that there is no authoritative tribunal for the determination of conventions does, however, create difficulties. They grow out of practice. Their existence is determined by precedents. Such precedents are not authoritative, like the precedents of a court of law. There are

<sup>1</sup> Jennings, *The Law and the Constitution*, pp. 93-4.

<sup>2</sup> Fitzroy, *Memoirs*, II, pp. 744, 751.

<sup>3</sup> *Ibid.* II, pp. 756-7.

precedents which have created no conventions, and there are conventions based on precedents which have fallen into desuetude. In discussing the action of the House of Lords on the Franchise Bill, 1883-4, Lord Salisbury said:

Our constitutional law is built up of precedents. If the House of Lords reverses its course, under threats, because a majority of the House of Commons object to their policy, it will, by that very act, become constitutional law that the House of Lords is bound to submit to the House of Commons.<sup>1</sup>

The argument is a *non sequitur*. Every act is a precedent, but not every precedent creates a rule. It can hardly be contended that if once the House of Lords agrees with the House of Commons it is henceforth bound to agree with the lower House. Again, the fact that the King asked Mr Baldwin and not Lord Curzon to form a Government in 1922 does not of itself imply that the King must never in future appoint a peer as Prime Minister. Similarly, the fact that the King, in 1924, granted Mr MacDonald a dissolution does not of itself imply that in future he has no right to refuse. It is more important that there is a course of precedents. The fact that the King assented to the Parliament Bill of 1910-11 and the Home Rule Bill of 1914 does not of itself prove that the King must invariably consent. It is a stronger fact that no monarch since Queen Anne has "vetoed" a Bill. The facts that no government has been dismissed since 1783 (regarding the "dismissal" of Viscount Melbourne in 1834 as not a dismissal), that no peer since the Marquis of Salisbury has been Prime Minister, that a dissolution has not definitely been refused for at least a century, and so on, are important.

Even so, precedents do not definitely prove anything. "Precedent, like analogy, is rarely conclusive", said Viscount Eschê<sup>2</sup> who was an authority on precedents and the confidential adviser of King Edward VII. Precedents create a rule because they have been recognised as creating a rule. There is a distinction between simple precedents and normative precedents. It is sometimes enough to show that a rule has

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 559-60.

<sup>2</sup> *The Influence of King Edward*, p. 67.

received general acceptance. Persons of authority for nearly a century have asserted the right of the Prime Minister to choose his colleagues, while recognising in the monarch the power to offer strong opposition to individual nominations. Persons of authority have never, so far as is known, asserted the duty of the monarch to grant a dissolution on request.<sup>1</sup>

But such general recognition cannot always be proved. There can be no sufficient general recognition of a recent precedent. Occasionally, a simple precedent will overthrow a long-standing rule. Until Mr Disraeli resigned in 1868, no Government had resigned on defeat at the polls and without meeting Parliament. Until 1932 no modern Government had "agreed to differ". Was it possible to say in 1868 that Mr Disraeli's act was unconstitutional, or in 1932 that the Cabinet's act was unconstitutional? The approach to the answer to these questions indicates an important characteristic of conventions. They do not exist for their own sake; they exist because there are good reasons for them. The Reform Act of 1832 and the strict party alignments which followed from it altered the nature of the Constitution. The power of the Government rested not on its ability by "management" to secure a majority of the House of Commons, but on the vote of the electorate at the previous election. As Mr Baldwin said in explanation of his resignation in 1929: "The people of this country had shown plainly that whether they wanted Hon. Members opposite or not, they certainly did not want me, and I was going to get out as soon as I could."<sup>2</sup>

The precedent of 1868 was due to the recognition of altered political conditions. The precedent of 1932 was due to exceptional political conditions. There was in existence a coalition government, formed of three parties with distinct organisation. It was created for what were alleged at the time to be specific purposes. It was said that the question of general tariffs was not one of the main problems which the Government had been formed to resolve, but was merely incidental. Accordingly it was agreed that members of the Cabinet might speak and vote against the proposal of the majority, which became the proposal of the

<sup>1</sup> I exclude text-book writers; they are not persons of authority for this purpose.

<sup>2</sup> 261 H.C. Deb. 5 s., 535.



Government. The precedent did not, therefore, change the ordinary rule of collective responsibility. It provided an exception to it, capable of application only where conditions were similar. For this exception special reasons were given; they may not be convincing, but in 1932, as in 1868, there were reasons.

Precedents create conventions because they have reasons of a general nature which relate them to the existing political conditions. The Reform Act fundamentally altered the political situation. So far as the older precedents depend upon the unreformed constitutional system, they are worthless. "It is only within the last fifty years", said Mr Gladstone in 1878, "that our constitutional system has settled down."<sup>1</sup> "The relations of the members of the Cabinet to their chief and to one another", said the Earl of Oxford and Asquith, "present little resemblance to the practice of the eighteenth century."<sup>2</sup> The effects of the Reform Act in resting political power upon popular election were not immediately obvious. It was thought necessary even in 1850 to secure from the House of Commons a vote of confidence because the House of Lords had passed a vote of no-confidence. Viscount Melbourne, in 1835, asked whether it was not a serious question for a man with a House of Commons majority to "engage in political warfare" with the Crown, a majority of the House of Lords, almost the whole of the clergy, and three parts of the "gentlemen of the country"<sup>3</sup>—the kind of question which no Liberal or Labour Government has since asked itself. In the same year, Viscount Melbourne explained to William IV that the confidence of the Crown was essential to the existence of the Government.<sup>4</sup> Sir Robert Peel's refusal of office in 1839 was due to his belief that the dismissal of the Queen's Whig Ladies was necessary as a mark of the confidence of the Crown.<sup>5</sup> At least as late as 1841 a dissolution of Parliament was regarded as an appeal by the Sovereign to the people, and not merely an appeal by the Government.<sup>6</sup> Precedents arising before 1832 must be used in rare cases only, for the Reform Act altered the fundamental assumption of the Constitution. The change

<sup>1</sup> *Gleanings of Past Years*, I, p. 225.

<sup>3</sup> *Lord Melbourne's Papers*, p. 239.

<sup>5</sup> *Peel Papers*, II, p. 392.

<sup>2</sup> *Fifty Years of Parliament*, II, p. 190.

<sup>4</sup> *Ibid.* pp. 269-72.

<sup>6</sup> See *post*, pp. 313-4.

was not immediately obvious. The King and his ministers continued to make the old assumptions until 1837.<sup>1</sup> For most purposes the new Constitution may be assumed to date from 1841.<sup>2</sup> In that year the accession of the Tory Government marked the acceptance of the principles of democratic government. The extension of the franchise, the hardening of party lines, and the intervention of the State in economic life, have shifted the emphasis. The essential principle remains. The British Constitution is democratic. The power of government rests in the last resort on the consent of the electorate, expressed at a general election. The powers of the Crown and of the House of Lords must be exercised in accordance with that principle. Precedents created in an age when the principle was not accepted are of no value if they contradict the principle; if they do not, they must be scrutinised with care in order to ascertain how far they remain in accord with modern constitutional ideas. Precedents, in short, are not conclusive. Unlike the precedents of the courts, they are not built upon each other by a peculiar technique. They are related immediately to political ideas. They create rules because rules are necessary; and the rules are established by precedents which accord with the developing principles of constitutional government. It is necessary to justify a constitutional convention not merely by precedents but also by reason.

This does not mean that earlier precedents are not sometimes quoted. In the debate on Roebuck's motion on the conduct of the Crimean War, Mr Disraeli quoted precedents from Charles II's reign. Mr Gladstone was able to show that they were not exactly in point.<sup>3</sup> Any precedent is good enough to attack an opponent, in spite of Viscount Melbourne's assertion that "there is nothing so bad as a bad precedent".<sup>4</sup> But it may be doubted whether the power of Parliament needs support from the actions of the notorious "Pension Parliament".

Another difficulty is that full information about precedents is not

<sup>1</sup> For good examples, see Torrens, *Memoirs of Lord Melbourne*, pp. 378-84; Disraeli, *Lord George Bentinck*, p. 80.

<sup>2</sup> For the period of transition, see Jennings, "Cabinet Government at the Accession of Queen Victoria", *Economica*, 1932 and 1933.

<sup>3</sup> *Parl. Deb.* House of Commons, 3rd Series, vol. 136, col. 1199 *et seq.* (1855).

<sup>4</sup> *Lord Melbourne's Papers*, p. 390.

always available. Precedents of certain kinds are collected in the Privy Council Office, and precedents of a Parliamentary kind are recorded in the Journals of the two Houses. But much of the machinery of government operates in secret. The Cabinet holds firmly to the principle of confidential discussion. The relations between the Crown and the ministers are not conducted openly. Much of the work of the parties, too, is conducted in private. A democratic government has to justify itself by its acts. But the process of reaching decisions is conducted in secret. Consequently, many precedents are not known publicly until many years after they have occurred. Most writers have been led astray on the subject of the monarchy, for instance, by Bagehot's exposition. The material now available makes it evident that Bagehot's analysis was in many respects faulty.

Since opinions about constitutionality are as important as facts, the most important material is to be found in "official" biographies and collections of papers. But such material is rarely published until after the death of the statesman concerned; and even then it is frequently "edited" in order not to offend susceptibilities. It is also published with the object of "honouring" the dead. Such material clearly has several defects. In the first place, it is not published until it is stale. The most important source of information is the *Letters of Queen Victoria*, which were not completely published until a generation after the Queen's death. In the second place, no material is available unless it is in writing. In the days when ministers spent most of their time writing letters, this was no great defect. The material now available for the fifty years after the Reform Act is not only abundant but superabundant. But in modern times ministers appear to write fewer letters. They decide matters by personal conversations, telephone communications, departmental minutes, and Cabinet discussions on the basis of memoranda. If records are made, they are usually not published. Indeed, the operations of the Official Secrets Acts have effectively stopped the publication of the most interesting documents.

In the third place, the editors of "biographical tombstones" are not always competent to select material or to explain it. In some cases,

executors have confided papers to relatives whose knowledge is not commensurate with their ambition. Their justification, no doubt, is that they are able to explain the statesman "as a man"; but in fact the general public is more interested in him as a statesman, and it requires a student of politics to explain politics. The best recent biography, the *Life of Lord Oxford and Asquith*, was produced by the collaboration of a publicist and a relative, the latter himself no mean student of politics.

In the fourth place, the essential material is frequently buried in a mass of general commendation. The reading of Sir Theo. Martin's *Life of the Prince Consort* is like living for six months on a diet of sugar. Some of the sycophancy can be skipped, but it is never possible to be quite certain that the selection of material is not aimed at showing that the deceased was the embodiment of the ultimate good.

Fifthly, much information comes at second hand. There are no "official" biographies of Lord Derby (the Prime Minister), or of Mr Bonar Law. Living statesmen have yet to undergo what Mr Gladstone called "monumental commemoration". The statements of contemporary observers are frequently inaccurate. We need not believe of Greville that

For fifty years he listened at the door,  
And heard some secrets and invented more.

We may, however, accept the judgment of Sir Alexander Gordon (the fourth son of the Earl of Aberdeen who became Prime Minister): "I find that, as regards almost every transaction of which I...happen to know the whole history, he [Greville] knows a great deal about it, but not *all* about it."<sup>1</sup>

Finally, there are at least two views of the actions of most statesmen. The official biography usually gives one view only. Moreover, the student of the Constitution is necessarily affected by his own bias. If he prefers the view of Mr Gladstone to that of Mr Disraeli, is the preference due to a genuine objective belief that Mr Gladstone understood the way in which the Constitution worked, (while Mr Disraeli worked the Constitution to suit his own ends)? If he comes to the conclusion

<sup>1</sup> *Life of Henry Reeve*, II, p. 353.

that Queen Victoria's relations with the Conservative Opposition were unconstitutional, "is his judgment wholly free from unconscious bias? True impartiality is not possible. He can only guard against prejudice, he cannot eradicate it.

For these reasons, the description of a Constitution must necessarily be defective. As Mr Baldwin has said:

The historian can tell you probably perfectly clearly what the constitutional practice was at any given period in the past, but it would be very difficult for a living writer to tell you at any given period in his lifetime what the Constitution of the country is in all respects, and for this reason, that almost at any given moment...there may be one practice called "constitutional" which is falling into desuetude and there may be another practice which is creeping into use but is not yet constitutional.<sup>1</sup>

Even Lord Bryce, whose competence as an expounder of constitutional questions cannot be doubted, says that the British Constitution <"works by a body of understandings which no writer can formulate">.<sup>2</sup> Nevertheless, these understandings do exist, and the student of the Constitution is able to form some judgment as to their content, though he must recognise that his conclusions are necessarily subject to qualification as more information becomes available. It is not entirely true to say, as Sir Austen Chamberlain has said with Mr Baldwin's approval, that "'unconstitutional' is a term applied in politics to the other fellow who does something that you do not like".<sup>3</sup> That doctrine would justify not merely the "agreement to differ" that Mr Baldwin was defending, but the use by the Government of its legal means for suppressing the Opposition and so destroying our democratic government, a process which Mr Baldwin would be one of the last to seek to justify.

### § 3. *The Democratic Principle.*

<Practices turn into conventions and precedents create rules because they are consistent with and are implied in the principles of the Constitution.> Of these, there are four of major importance. The British Con-

<sup>1</sup> 261 H.C.Deb. 5 s., 531.

<sup>2</sup> Quoted in Report of the Joint Select Committee on Indian Constitutional Reform (1934), vol. I, part I, p. 7.

<sup>3</sup> 261 H.C.Deb. 5 s., 530 (1932).

stitution is democratic; it is Parliamentary; it is monarchical; and it is a Cabinet system. It is democratic because it is carried on in the name of the people according to doctrines freely accepted or acceptable to the people at a general election. It is Parliamentary because the people are for the time being represented by the House of Commons, subject always to an appeal to the electorate, because, in consequence, the approval of the House of Commons is necessary for the general policy and, frequently, the specific proposals of the Government; and because all other authorities in the State, including the Sovereign and the House of Lords, must give way to a House of Commons that clearly represents the people. It is monarchical because the titular head of the State is a Sovereign who is the representative for the time being of a dynasty established by law. It is a Cabinet system because responsibility rests, subject to the House of Commons and the people, not on a single individual but on a committee of politicians sitting in Cabinet.

The fundamental principle is that of democracy. The electors are all British subjects of full age resident in the United Kingdom and not subject to legal disqualification. The King, the Cabinet, the House of Commons and even the House of Lords are the instruments which history has created as, or political conditions have converted into, instruments for carrying out the democratic principle. It follows that freedom of speech and freedom of association are essential to the Constitution. Without free elections the people cannot make a choice of policies. Without freedom of speech the appeal to reason which is the basis of democracy cannot be made. Without freedom of association, electors and elected representatives cannot band themselves into parties for the formulation of common policies and the attainment of common ends. The extension of the franchise, the attainment of a large measure of freedom of speech, and the organisation of parties, have created the modern Constitution. The House of Commons and the Cabinet are the instruments of democracy. The prerogative of the Crown and, to a less degree, the powers of the aristocracy, have been subordinated to public opinion.

The appeal of the respective parties to the electorate and the choice of the electorate determines the party composition of the House of Com-

mons. The party composition of the House of Commons determines the party origin of the Cabinet. The Revolution of 1688 finally settled that in the last resort the King must give way to Parliament. The Cabinet was the means by which the King on the one hand made certain that his actions had Parliamentary approval and on the other hand was enabled to control Parliament through its majority. For many years after 1688 that majority was kept and maintained through "connection". Under George I and George II the policy was that of the Cabinet, subject always to royal veto. The "support" of Parliament was obtained through the system of "management" which the Duke of Newcastle converted into a fine art. George III adopted his own policy and, until 1784, he was generally able by "management" to maintain a majority for himself and his Cabinet. From 1784 the policy was primarily that of the Cabinet. "Management", too, gradually lost its sinister connotation from Burke's Economy Act of 1782 onwards. Parties ceased to be collections of great landlords and their relatives, supported by a motley crew of careerists, and became instead congeries of politicians possessing more or less common ideas. With the accession to power of the Whigs in 1830, government became more dependent on public opinion.

The Reform Act of 1832 not only marked the change, it made it more emphatic. With the almost complete extinction of the "rotten boroughs" (not entirely complete, as the Churchill borough of Woodstock showed), "influence" became much less important and candidates began appealing on a policy. Sir Robert Peel's Tamworth manifesto of 1834 showed that Governments must in future appeal to opinion. His accession to office in 1841 demonstrated that opinion could change Governments. Sir Robert Peel was, in the strictest sense, the first of the modern Prime Ministers, and, it has been said, "the model of all Prime Ministers".<sup>1</sup>

The changes were not equally obvious to all. Lord George Bentinck, the leader of the Protectionists after their defection from Peel's Government, "thought that the Constitution of this country required that we should consider what is best for the general good of the country; and

<sup>1</sup> Rosebery, *Miscellanies*, I, p. 197.

that it was not for us to be taught by the constituencies what is best for the interest of the country".<sup>1</sup> But Disraeli, the apostle of the new age, thought otherwise: "No one knew better than Sir Robert Peel that, without Parliamentary connection, that Parliamentary government which he so much admired would be intolerable; it would be at the same time the weakest and the most corrupt in the world."<sup>2</sup> It would be not only weak, but impossible. The Government rests upon its party support in the House of Commons. Disraeli's criticism of Peel was that he "seems never to have been conscious that the first duty of an English minister is to be faithful to his party, and that good and honourable government is not only consistent with that tie, but is in reality mainly dependent on its sacred observance".<sup>3</sup> The statesman's authority rests on his party because his party has successfully appealed to the people. The party supports a policy; the democratic system implies an appeal to the people by contending parties supporting different policies.

Democratic government thus demands not only a Parliamentary majority but also a Parliamentary minority. The minority attacks the Government because it denies the principles of its policy. The Opposition will, almost certainly, be defeated in the House of Commons because it is a minority. Its appeals are to the electorate. It will, at the next election, ask the people to condemn the Government, and, as a consequence, to give a majority to the Opposition. Because the Government is criticised it has to meet criticism. Because it must in course of time defend itself in the constituencies it must persuade public opinion to move with it. The Opposition is at once the alternative to the Government and a focus for the discontent of the people. Its function is almost as important as that of the Government. If there be no Opposition there is no democracy. "His Majesty's Opposition" is no idle phrase. His Majesty needs an Opposition as well as a Government.

Party warfare is thus essential to the working of the democratic system. Yet it will not function if it is carried to extremes. A Government in control of both Houses could effectively stifle the Opposition. An Opposition which would not accept the majority rule could make the parliamentary system unworkable. In practice, government is by

<sup>1</sup> Disraeli, *Lord George Bentinck*, p. 80.

<sup>2</sup> *Ibid.* p. 224.

<sup>3</sup> *Ibid.* p. 282.



consent and opposition by agreement. In part, no doubt, mutual forbearance is good strategy. Experience has taught the British people that "fair play" is as necessary in public as in private life. It has taught parties that Parliamentary intransigence and electoral dishonesty bring ultimate retribution at the polls. But the real reason is that the parties, like the people, accept the necessary conditions of democracy. They accept the principle, that is, that the majority may govern but may not oppress the minority. Government and Opposition alike assume the honesty of the other. The British Constitution, said Mr Gladstone, "presumes, more boldly than any other, the good faith of those who work it".<sup>1</sup> The "understandings and habits of mind" by which the Constitution functions are "bound up with the growth of mutual confidence between the great parties in the State, transcending the political differences of the hour".<sup>2</sup> Democratic government has its Marquis of Queensberry rules, and public opinion is the referee.

The democratic principle is operated through the medium of the House of Commons. According to the pretty schematisation of the text-books, the member of Parliament represents a majority of the electors; the Government is responsible to a majority of the House of Commons; and thus it represents a majority of the electors. The system is, however, more complicated. Though it is convenient, for text-book exposition, to assume the absence of a Government and then to show how one is formed, there is in fact always a Government in existence. It is, also, not a group of administrators only. It is a group of party leaders. Subject to the law as to the termination of Parliament, it chooses for the dissolution of Parliament the moment most propitious to its own party prospects. If, as in 1900, 1918, 1931 and 1935, it can seize a moment of international excitement when it has, as it always puts it, "the nation behind it", it uses its moral authority as a Government to assist its propaganda as a party.

Moreover, the electors do not vote for a candidate but for a party. An unusually feeble candidate may lose some votes; a particularly able

<sup>1</sup> *Gleanings*, I, p. 245.

<sup>2</sup> Report of the Joint Select Committee on Indian Constitutional Reform (1934), vol. I, part I, p. 7.

candidate may gain some votes by his personality. But the ablest candidate cannot win a seat which is, from the party point of view, "hopeless"; nor can the feeblest candidate lose a seat which is "safe". There is a core of voters who would think it treachery to vote against "the Party". Even the so-called "floating vote", which possesses no fixed party affiliations, is affected more by the reputation of a party than by the reputation of a candidate. Also, though many of the constitutional principles assume the two-party system, whereby one party is "in" and the other "out", it frequently happens that there are three or more candidates available for each seat, and since there is no kind of proportional representation except in the University constituencies (where it rarely operates owing to the strength of Conservative domination), the candidate who is elected may obtain only the largest minority vote and not the votes of a majority. Further, since neither constituency electorates nor majorities are equal, a majority of members of the House of Commons, all of whom secured majorities, would not necessarily represent a majority of the electors. Frequently the size of a majority in the House of Commons has little relation to the size of the majority, if any, of the total votes cast.

Again, though it is true that the Government is responsible to the House of Commons, this must be understood in a peculiar sense. This is not the place to examine the doctrine in detail.<sup>1</sup> Several observations must, however, be made. Responsibility does not mean that every governmental act has to be reported to and approved by the House of Commons. The Government needs express Parliamentary approval for its legislative proposals and most of its expenditure. It has to seek approval, too, of most of its proposals for taxation. It is called upon to explain and justify its administrative policy. If the House of Commons clearly shows that it does not propose to support the Government—if, that is, the Government has lost the "confidence" of the House—it must resign both because of constitutional conventions and because government without constant Parliamentary support is legally impossible. But the House of Commons is not composed of individual members, each of whom takes thought about the desirability of each

<sup>1</sup> See Chapter xiv.

proposal and votes accordingly. The House of Commons consists of parties. The Government, as a party authority, has control over one or more of them. It appoints "whips" and pays many of them out of public funds. It is their function to see that the members of the party attend the House and support the Government. If the Government has a majority, and so long as that majority holds together, the House does not control the Government but the Government controls the House.

The Government's control over its majority is substantial. To vote against the Government is to vote against the party. To rebel against the Government is to leave the party. To leave the party is to lose party support at the next election; and, since the average elector votes for the party label, this means, probably, that the member will not be re-elected. Membership of the House and accession to office alike depend on party service and party support. Self-interest dictates support even when reason suggests opposition. Moreover, to vote against the Government is to vote with the enemy. To assist in defeating the Government is to risk the coming into office of the Opposition—a result which is, *ex hypothesi*, worse than keeping the Government in office. All this does not apply to a Government which possesses no majority, owing to the existence of three or more parties. In this case the support of a third party is essential; and, since third parties have difficulty in persuading the electors of the strength of their case, the threat to dissolve is usually effective.

The function of the House of Commons is, therefore, not to control the Government, but to act as a forum for criticism and a focus of outside opinion. The supporter of the Government can make his voice heard in private even when he refrains from acts of opposition. The force of an Opposition's criticism depends on the strength of opinion behind it. Even a dictator must give ear to public opinion. Where, as in the British system, debate is open, argument is public, propaganda has diverse ends and elections are free, and where, again as in our system, elections must occur at regular intervals, opinion has its influence not only at elections but at all times. British Governments are strong governments, and all the stronger because their power rests on free opinion; but they are not dictators. They can do unpopular things, but

retribution follows if popularity is irretrievably lost. Government, with us, is government by opinion; and that is the only kind of "self-government" that is possible. So there arise "two familiar British conceptions; that good government is not an acceptable substitute for self-government, and that the only form of self-government worthy of the name is government through ministers responsible to an elected legislature".<sup>1</sup> There is, indeed, a third British conception, that good government cannot endure unless it is self-government.

<sup>1</sup> Report of the Joint Select Committee on Indian Constitutional Reform (1934), vol. I, part I, p. 5.

## CHAPTER II

### The Choice of a Prime Minister

The Government is a body of party politicians selected from among the members of that party or group of parties which has a majority or can secure a majority in the House of Commons. By this device the operations of Government and legislature (subject always to the powers of the House of Lords) are integrated. Public opinion controls the Government through the House of Commons; and the Government through its majority controls the House of Commons. But the members of the Government are not elected by the House of Commons. They are nominated by the Prime Minister, subject to what will be said in the next chapter. The choice of a Prime Minister is therefore a function of some importance. It determines, subject to political conditions, the personnel of the Government.

The range of choice is necessarily limited by political conditions. The Prime Minister must be able to secure colleagues and, with his colleagues, he must be sure of the collaboration of the House of Commons. Frequently there is no choice at all. A party may possess both a majority and a recognised leader. Its support is therefore necessary, and it will support no leader except its own. At other times, however, the succession is obscure, and then a real choice can be made among several possible candidates.

This choice is exercised by the King. It is one of the advantages of constitutional monarchy that the titular head of the State has, so to speak, no party history. Unlike an elected President, he has no party loyalties. He may be, of course, hopelessly incompetent. He will have his prejudices, both political and personal. But the choice of a Prime Minister demands independence of status and familiarity with political conditions; and no method of choice can altogether avoid bias. Monarchy does provide independence of status and it avoids that kind of bias which proceeds from party loyalty. British monarchs, too, usually have a

longer period of "office" than their ministers. Queen Victoria on one occasion quoted to Mr Gladstone what the Duke of Wellington had told her about William Pitt. George V had twenty-six years' experience of the political situation.

It is a settled rule that the Prime Minister must be either a peer or a member of the House of Commons. Parliamentary government demands not merely that the Prime Minister shall, with his colleagues, be responsible to the House of Commons, but also that he shall be able to justify his policy in Parliament. Every Prime Minister since Sir Robert Walpole has been in one of the Houses.

As long ago as 1839 the Duke of Wellington stated in the House of Lords: "I have long entertained the opinion, that the Prime Minister of this country, under existing circumstances, ought to have a seat in the other House of Parliament, and that he would have great advantage in carrying on the business of the Sovereign by being there."<sup>1</sup> He had already declined the office in 1834, on the ground that the party differences were in the House of Commons.<sup>2</sup> Six of the Prime Ministers since 1837 have been peers; but experience has tended to show that the Duke exercised unusual foresight. Lord Melbourne had some difficulties with Lord John Russell. Lord Derby had cause to complain that Mr Disraeli accepted amendments of substance in the House of Commons without prior consultation. Lord Aberdeen had the greatest difficulty in collaborating with Lord John Russell. Lord Beaconsfield's overwhelming position prevented serious difficulties with so mild a leader of the lower House as Sir Stafford Northcote; but the rise of the "fourth party" made Lord Salisbury's absence from the House of Commons a source of weakness.

Mr Gladstone in 1894 did not consider that a Prime Minister ought necessarily to be in the House of Commons.<sup>3</sup> But Lord Rosebery told Sir William Harcourt that "the whole machinery of government was in the House of Commons and that it was next door to an absurdity to conduct it from the House of Lords".<sup>4</sup> The experience of the "dark

<sup>1</sup> *Parl. Deb.* 3rd Series, vol. 47, col. 1016.

<sup>2</sup> Peel, *Memoirs*, II, p. 19.

<sup>3</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 369.

<sup>4</sup> *Life of Sir William Harcourt*, II, p. 271.

horse in a loose box" accorded with his prophecy. Harcourt's own opinion was that "the House of Commons makes and unmakes a Government, and has a right to expect that its chief representative should be within its sphere of influence and personally accountable to it".<sup>1</sup>

Moreover, the relative positions of the two Houses were modified during the nineteenth century. Even after the Reform Act the "family" system of government continued. Melbourne "damned the Whigs" because they were "all cousins". The possession of great estates was a title to office until quite late in the century. Until 1868 both parties, as well as the Queen, denied the validity of the doctrine of "democracy". As late as 1850 the Government regarded a defeat in the House of Lords as serious enough to require a vote of confidence in the House of Commons. The acceptance of democratic principles in 1867 and 1884 gave to the House of Commons an overwhelming preponderance.

Again, there was a real party conflict in the House of Lords for most of the nineteenth century. As the House of Commons became more democratic, however, the House of Lords became more Conservative. Mr Gladstone's many creations did not redress the balance; for the successors of Liberal peers tended to become Conservatives. The introduction of the Home Rule Bill in 1886 turned most of the Liberal peers into opponents of Liberal Governments. Since that time the upper House has been overwhelmingly Conservative. There are now few Liberal peers, and a mere handful of Labour peers—mostly recent creations.

The Parliament Act of 1911, too, has considerably reduced the authority of the House of Lords. Though the House contains over 700 members, an attendance of more than 100 is rare. Frequently the "House of Lords" means little more than the ministers and the other party leaders.

No peer has been Prime Minister since the resignation of Lord Salisbury in 1902. In 1923 the question, whether it was then possible for a peer to become Prime Minister, was definitely raised. The resignation of Mr Bonar Law left the King with a choice between Lord Curzon

<sup>1</sup> *Life of Sir William Harcourt*, II, p. 627.

and Mr Baldwin. Lord Curzon's experience and party standing were greater. It is doubtful if Mr Baldwin would have become prominent in the councils of the Conservative Party but for the fact that most of the Coalition Unionists remained faithful to Mr Lloyd George in 1922. The King nevertheless chose Mr Baldwin. Lord Stamfordham on his behalf explained to Lord Curzon that "since the Labour Party constituted the official Opposition in the House of Commons and were unrepresented in the House of Lords, the objections to a Prime Minister in the Upper Chamber were insuperable".<sup>1</sup> It is said that this was the view of the most prominent Conservatives, including Lord Balfour, Lord Long, Lord Salisbury and Mr Amery, who were consulted by the King.<sup>2</sup>

A single precedent does not create a rule. But the considerations set out above, and the fact that they proved conclusive in a strong test case, suggest that a Prime Minister must be in the House of Commons. The Government owes a responsibility to that House alone. The composition of that House determines the nature of the Government. A vote in that House can compel the Government either to resign or to advise a dissolution. The Prime Minister is not merely chairman of the Cabinet; he is, also, responsible for the party organisation. That organisation matters in the House of Commons and does not matter in the House of Lords. Even when the Government has a majority in the House of Lords, the effective decisions are taken in the lower House. An amendment to legislation is generally accepted in the House of Lords by the Government only *ad referendum*. It is, in practice, essential that the Prime Minister should have his finger on the pulse of Parliament; and that is in the House of Commons.

The nature of the King's choice necessarily depends upon the state of parties in the House of Commons. The simplest case is that in which a party has a clear majority. The Government must clearly be formed out of that majority; and if it has a recognised leader, he will be the Prime Minister. Such a situation usually arises as the result of a general election. In 1841 the Whigs were defeated at the general election, but met Parliament and were then defeated on a no-confidence amendment

<sup>1</sup> *Life of Lord Curzon*, I, p. 352.

<sup>2</sup> Nicolson, *Curzon: The Last Phase*, pp. 353-5.



to the Address. The Conservatives had a clear majority and recognised Sir Robert Peel as their leader. Thus the Queen had no choice at all. According to the modern practice, the defeated government would not meet Parliament at all, but would resign as soon as the result of the general election was known. In 1874, for instance, Mr Gladstone's Government resigned at once, and the Queen sent for Mr Disraeli. Similarly, Mr MacDonald resigned at once in 1924 and the King sent for Mr Baldwin.

But the party has not always a recognised leader. In 1868 the Queen might have sent for Lord Russell, though in fact she sent for Mr Gladstone. This step had, however, been expected, and Mr Gladstone had led the Opposition in the previous Parliament. This case is in fact very little different from that of 1874. The general election of 1880 supplies a better example. Mr Gladstone had resigned his leadership in 1874. Lord Granville led the Liberals in the House of Lords and Lord Hartington was leader in the House of Commons. Nevertheless, Mr Gladstone had led the opposition to the Government in the country, and the election was regarded by the ordinary elector as a personal contest between him and Lord Beaconsfield. The Queen sent for Lord Hartington. But he and Lord Granville had already agreed that Mr Gladstone must be Prime Minister. He recognised that no Government could be formed without Mr Gladstone's participation. As soon as he found that Mr Gladstone would not accept subordinate office, he advised the Queen to send for Mr Gladstone, and his arguments were supported by Lord Granville. Accordingly the Queen sent for Mr Gladstone and commissioned him to form a government. As Lord Morley said:<sup>1</sup> "It was Mr Gladstone's majority. . . . Whatever liberty of choice the theory of our Constitution assigned to the Queen, in practice this choice did not exist."

Such a situation is not likely to be of frequent occurrence. Normally a party which succeeds in obtaining a majority at an election will have a recognised leader. But the King may have an effective choice where a Prime Minister in office offers a personal resignation or dies. The death of Lord Palmerston in 1865 does not provide a very good example

<sup>1</sup> *Life of Gladstone*, II, p. 618.

because there was little doubt that Lord Russell, who had already been Prime Minister, ought to be his successor. Again, on the resignation of Lord Derby in 1868 there was little doubt that Mr Disraeli must be appointed (although the Government had no majority). The resignation of Mr Gladstone in 1894 provides a better instance. He himself informed Mr John Morley that, if asked, he would advise the Queen to send for Lord Spencer. Possibly, Lord Spencer might have secured the support of the Cabinet. For both Lord Rosebery and Sir William Harcourt had opponents as well as supporters. It appears that the great majority of the Cabinet, including Mr Morley himself, favoured Lord Rosebery. It is not clear whether this was known to the Queen. In any case, all her sympathies (so far as she had any sympathies for any Liberal minister) were with Lord Rosebery, and she appointed him to the office.

Another example is that of 1908, when Sir Henry Campbell-Bannerman resigned. But here it was clear that Mr Asquith, who had acted as Prime Minister during Campbell-Bannerman's illness, would be the successor. The precedent of 1935, when Mr MacDonald resigned, is a little peculiar, since the National Government was a coalition. As nearly all the supporters of the Government were Conservatives, there was little doubt that Mr Baldwin would be the successor.

A completely different situation arises where the Government is defeated in the House of Commons and resigns. It may be assumed that such a case as that of 1841, when the Opposition had a clear majority, will not occur again, since, according to the modern practice, if an Opposition party secures a clear majority at a general election the Government does not go through the formality of meeting Parliament. It may be assumed, therefore, that on the defeat of a Government no party will have a majority. Such a situation will arise either because there are three or more parties, none having a majority, as when Whigs and Peelites defeated the Derby Government of 1852; when Liberals, Radicals and the Irish defeated the Salisbury Government in 1886; and when the Labour Party and the Liberals defeated the Conservative Government after the general election of 1923; or because the defection of a section of the Government party destroys its majority, as when the

Protectionists left Peel in 1846; when Russell "chalked up 'No Popery'" in 1851; when Palmerston had his "tit for tat" in 1852; when Russell supported Roebuck's motion in 1855; when the Orsini plot destroyed Palmerston's majority in 1858; when Robert Lowe led the Adullamites against the Reform Bill of 1866; when Gladstone was defeated in 1885; and when Rosebery's Government was defeated on the Cordite vote in 1895.

In such a case the King has to consider three possibilities. The first is that a coalition government may be formed. In 1851 the Queen sent for Lord John Russell and Sir James Graham in the hope that a coalition between Whigs and Peelites was possible. The combination was not then possible, but it was effected in 1855, when the Queen sent for Lord Aberdeen and Lord Lansdowne, and the former established a coalition Government. On the defeat of that Government in 1855 she again tried to form a coalition after Lord Derby had refused to form a Conservative Government. Lord John Russell failing, Lord Palmerston was invited to reform, and succeeded in reforming, the coalition between Whigs and Peelites, though most of the Peelites left the Government shortly afterwards. Lord Derby in 1866 tried to form a coalition Government, but failed to obtain support outside his own party, and formed a minority Conservative Government instead. The same result followed in 1886, though Lord Salisbury was assured of Liberal Unionist support, and the coalition was formed in 1895.

The second possibility is that one party may form a minority Government with the intention of advising a dissolution as soon as it is practicable to do so. Sir Robert Peel undertook to form a Conservative Government in 1839, but the "Bedchamber question" compelled him to resign his task, and the Whig Government continued in office. In 1851 Lord Stanley tried to form a minority Government but was unable to secure the support of his party. He succeeded in 1852 but was unable to obtain a majority at the ensuing general election. In 1855 the Queen again sent for Lord Derby, but this time he refused, though he accepted office with the same result in 1858 and in 1866 (though on this occasion there was no election until 1868). Mr Disraeli refused to accept office in 1873, and thus compelled Mr Gladstone to dissolve in 1874. Lord

Salisbury, however, accepted office in 1892 and again in 1895. Sir Henry Campbell-Bannerman and Mr Bonar Law formed Governments in 1905 and 1922 respectively, though in these cases the Government resigned without being defeated.

The third possibility is that a minority Government can be formed which may be able to maintain itself in office in spite of its lack of a majority.<sup>1</sup> This happened in 1846, when Lord John Russell was able to obtain Peelite support; in 1866, when Mr Disraeli's finesse enabled the Conservatives to remain in office until 1868; in 1886, when Lord Salisbury was supported by the Liberal Unionists; and in 1924, when Mr MacDonald received discriminating Liberal support.

The situation is much the same where internal dissensions cause the Government to resign without being defeated. This happened in 1905, when Sir Henry Campbell-Bannerman formed a Government with the intention of advising an immediate dissolution; in 1922, when the defection of the Conservatives compelled Mr Lloyd George to resign; and in 1931, when a coalition Government which took the title of "National" was formed. Where no party obtains a majority at a general election, there are two possibilities only, since another dissolution is not practicable. This in fact occurred in 1924, though the Government was defeated in Parliament before resigning, and in 1929, when it resigned without meeting Parliament.

Apart, therefore, from the conditions which arise when a Prime Minister dies or resigns for personal reasons, the King's free choice arises through complications in the political situation. Such complications are of more frequent occurrence than is commonly realised. There were minority Governments from 1839 to 1841, from 1846 to 1852, in 1852, from 1858 to 1859, from 1866 to 1868, from 1885 to 1886, in 1886, from 1886 to 1892, from 1910 to 1915, in 1924, and from 1929 to 1931. There were coalition Governments from 1852 to 1855, from 1895 to 1905, from 1915 to 1922, and since 1931.<sup>1</sup> The exact point at which a coalition becomes a unified party Government is not always clear. There

<sup>1</sup> The coalition since 1931 is peculiar in that one of the parties, the Conservative Party, has had a majority over all other parties, including the minority parties represented in the Government.

is a tendency for coalitions to lose their party differences. It is not possible to fix the date on which the Peelites were absorbed into the Liberal Party, nor that at which the Liberal Unionists were merged into the Conservative Party. It is, for instance, a little pedantic to refer to the Unionist Governments from 1900 to 1905 as "coalitions"; and, on the other hand, it is possible to be still more pedantic, and to assert that Palmerston's Government from 1855 to 1858 was a coalition of Liberals and Peelites. The process of absorption is going on at the moment, since it is somewhat difficult to assert that there is a "National Labour Party".

It must not be thought, however, that the absence of a strict two-party system gives the King a discretion to summon as Prime Minister whom he pleases. It is an accepted rule that when a Government is defeated, either in Parliament or at the polls, the King should send for the leader of the Opposition. There may be two or more parties in Opposition. But the practice of the present century has created an "official" Opposition whose leader is "the leader of the Opposition". That leader is associated with the Prime Minister in non-political matters, such as those connected with the Crown. It is he who asks questions as to Parliamentary business, though the conversations "behind the Speaker's Chair" which enable business to be conducted expeditiously are conducted between the Government and the leaders and Whips of all the Opposition parties. The largest party in Opposition is the "official" Opposition.

The rule is that on the defeat and resignation of the Government the King should first send for the leader of the Opposition. This rule is the result of long practice, though it has hardened into a rule comparatively recently. Its basis is the assumption of the impartiality of the Crown. Democratic government involves competing policies and thus the rivalry of parties. The policy to be forwarded is that which secures the approval of the House of Commons, subject to the power of the Government to appeal to the electors. If, therefore, the Government is defeated in the House of Commons and does not appeal to the people, or if, having appealed to the people, it is defeated, a new Government has to be formed. The King's task is only to secure a Government, not

to try to form a Government which is likely to forward a policy of which he approves. To do so would be to engage in party politics. It is, moreover, essential to the belief in the monarch's impartiality not only that he should in fact act impartially, but that he should appear to act impartially. The only method by which this can be demonstrated clearly is to send at once for the leader of the Opposition.

In 1839 and 1841 Lord Melbourne advised the Queen to send for Sir Robert Peel, as leader of the Conservative Opposition. In 1845 Peel suggested, without formally giving advice, that she should send for Lord John Russell, who was clearly the leader of the Whigs. Lord John Russell was then unable to form a Government, but did so in 1846. In 1851 the Queen decided to send for Lord Stanley, and Lord John Russell and Lord Lansdowne, who were consulted, agreed with the Queen and the Prince Consort that "Lord Stanley and the Protection Party ought to be appealed to".<sup>1</sup> Lord Stanley was unable to form a Government, but did so in 1852. The position on his resignation was peculiar, because of the agreement of Whigs and Peelites to serve under Lord Aberdeen. The Queen sent for Lord Aberdeen, but protected herself by sending for Lord Lansdowne as well.

In 1855 Lord Aberdeen agreed with the Queen that "there remained nothing to be done but to offer the Government to Lord Derby, whose Party was numerically the strongest, and had carried the motion".<sup>2</sup> The Queen sent for Lord Derby "as the head of the largest party in the House of Commons, and which had by its vote chiefly contributed to the overthrow of the Government".<sup>3</sup> Lord Derby denied the responsibility, since his party had not proposed the motion and had had no communication with the mover, though their views compelled them to support the motion. Lord Derby, being unable to form a coalition, refused to take office. He was again sent for in 1858 and formed a Government.

In 1859 there was no doubt that the Liberal Party must form the Government, and there was doubt only about the leader. On the resignation of Lord Russell's Government in 1866, the Queen sent for Lord

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 347.

<sup>2</sup> *Ibid.* 1st Series, III, p. 101.

<sup>3</sup> *Ibid.* 1st Series, III, p. 102.

Derby. In 1868 she sent for Mr Gladstone "as the acknowledged leader of the Liberal Party".<sup>1</sup> In 1873 she sent for Mr Disraeli, who refused to form a Government with the existing House of Commons. In 1874 she again sent for him, and this time he accepted office. In 1880 she sent for Lord Hartington "as leader of the Opposition"<sup>2</sup>; though the phrase was not accurate, Lord Hartington was certainly leader of the Liberal Opposition in the House of Commons. On the resignation of Mr Gladstone's Government in 1885 she sent for Lord Salisbury, who led the Conservative Party in the House of Lords.

The Queen was anxious not to follow this series of precedents on the resignation of Lord Salisbury's Government in 1885. It should first be said in the Queen's favour that it was by no means certain that Mr Gladstone could form a Government. There had been dissensions over Irish policy in his previous Government, and the rumours as to his policy during the election, especially the "Hawarden Kite" which Mr Herbert Gladstone had flown, had shown clearly that some of the influential Liberal leaders would not follow him. But she had summoned Lord Derby in 1851, 1852, 1855, 1858, and 1866, when it was more difficult for him to form a Government than it was for Mr Gladstone to form a Liberal Government in 1863. Moreover, she had summoned Lord John Russell after Lord Derby's refusal in 1855, when it was obvious to everybody except Lord John Russell that he could not form a Government. The real reason for her hesitation in 1885-6 was that she disliked intensely Mr Gladstone's policy. She was supported, too, by Lord Salisbury, who followed the unconstitutional precedent which Lord Beaconsfield had set in 1880, with the Queen's connivance, of considering the prospects of the Conservative Party rather than the necessity of preserving the Queen's impartiality.

When the defeat of the Government at the general election was imminent, the Queen, with Lord Salisbury's consent, opened communications with Mr Goschen, who still called himself a Liberal. "I appeal to you", she said,<sup>4</sup> "and to all moderate, loyal, and *really* patriotic men,

<sup>1</sup> *Life of Gladstone*, II, p. 252. The phrase is probably not quite accurate.

<sup>2</sup> *Life of the Duke of Devonshire*, II, pp. 272-3.

<sup>3</sup> *Ante*, p. 26.

<sup>4</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 712-14.

who have the safety and well-being of the Empire and the Throne at heart, and who wish to save them from destruction, with which, if the Government again fall into the reckless hands of Mr Gladstone, they would be threatened, to rise above party and to be true patriots!" The letter went on to explain that it was the duty of moderate Liberals ("who indeed ought to be called '*Constitutionalists*'") "to prevent Mr Gladstone recklessly upsetting the Government". She then said that if they did not act the country would be ruined, and explained in a post-script that the Conservative Party "are very united and strong".<sup>1</sup> The Marchioness of Ely, on the Queen's behalf, sent a similar but more coherent and less passionate letter to Mr W. E. Forster.<sup>2</sup>

Mr Goschen's reply was, to the Queen, "very satisfactory" and the replies of Lord Hartington and Mr Forster "most satisfactory".<sup>3</sup> Another letter from Mr Goschen explained that "the most important of Mr Gladstone's later colleagues" would do their utmost to prevent the adoption of any course that might compel the Government to resign.<sup>4</sup> The Queen informed Lord Salisbury of its contents.<sup>5</sup> Another "very satisfactory" letter from Mr Goschen produced the reply that it was "now a *duty of all true patriots*" to show that "the moderate leaders of the Liberal Party" did *not* lean to Mr Gladstone's way of thinking.<sup>6</sup> But, whatever the "true patriots" might be thinking or doing, the Government was defeated on the "three acres and a cow" amendment moved by Mr Jesse Collings. There were, it seems, only about thirteen Liberal patriots true enough to vote with the Conservative Government.

The Queen was reluctant to accept the Government's resignation and suggested that she should talk to Mr Goschen. Lord Salisbury agreed, and suggested that it should be done by his advice in order to relieve her from all responsibility. The Queen satisfied her conscience by considering that "in former days old Lord Lansdowne and the great Duke of Wellington had been consulted in this way, in '51 and in '55".<sup>7</sup> Lord Salisbury also expressed the wish that "the moderate parties should

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 712-14.

<sup>2</sup> *Ibid.* 2nd Series, III, p. 714.

<sup>4</sup> *Ibid.* 3rd Series, I, pp. 5-6.

<sup>6</sup> *Ibid.* 3rd Series, I, pp. 16-17.

<sup>3</sup> *Ibid.* 2nd Series, III, pp. 717-18.

<sup>5</sup> *Ibid.* 3rd Series, I, p. 8.

<sup>7</sup> *Ibid.* 3rd Series, I, p. 24.



draw together".<sup>1</sup> He saw the draft of the invitation to Mr Goschen and justified himself by stating that "the constitutional rule is that your Majesty can never be without a Minister; for, as your Majesty can do no wrong, there must always be somebody whom the House of Commons can impeach. From this Lord Salisbury would deduce that a resignation of a Prime Minister can never be accepted till the successor is definitely suggested".<sup>2</sup> Mr Goschen, however, telegraphed that his visit would expose the Queen to misconstruction and misinterpretation, and entreated her to send for Mr Gladstone.<sup>3</sup>

Sir Henry Ponsonby then saw Lord Salisbury, and reported that Lord Salisbury had said that "had Mr Gladstone announced the Irish policy attributed to him, there might have been some grounds for not calling upon him to form a Government. But no public authorised statement had appeared, and he felt compelled to advise that your Majesty should send for Mr Gladstone". But Lord Salisbury also said that Mr Goschen ought to have gone to Osborne, and that Sir Henry Ponsonby should see Mr Goschen. Mr Goschen was insistent that Sir Henry Ponsonby should see Mr Gladstone at once. Ponsonby then saw Mr Gladstone, and explained that the Queen asked if he could form an administration. He added: "That your Majesty had understood, from his repeated expressions of a desire to retire from public life, that he would not accept office, and therefore in sending this message she left him free to accept or not." Mr Gladstone, in accepting, said that he was "very grateful for your Majesty's gracious consideration for his declining years".<sup>4</sup>

In the end, therefore, the Queen followed precedent. Her anxiety to see Mr Goschen was due to a hope that a coalition could be formed to keep out Mr Gladstone and to prevent the acceptance of the Home Rule policy which, as she assumed, Mr Gladstone would propose. Her motives were quite unconstitutional. If the Crown accepts a policy and uses its powers to forward that policy, it takes part in party warfare. It is then inevitable that people who disagree with that policy should enter into a contest with the Crown. Lord Salisbury's suggestion that the

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 25.

<sup>2</sup> *Ibid.* 3rd Series, I, p. 26.

<sup>3</sup> *Ibid.* 3rd Series, I, p. 26.

<sup>4</sup> *Ibid.* 3rd Series, I, pp. 27-8.

Queen could have refrained from sending for Mr Gladstone if he had openly declared for Home Rule will not bear examination. The Queen would not have been entitled to use her powers either for or against Home Rule. It was her duty to find a Government which could secure a majority in the House of Commons. The electorate had just returned a substantial Liberal majority. That Liberal majority was led by Mr Gladstone. Under his leadership it had supported an amendment to the Address which, as Lord Salisbury rightly saw, compelled the resignation of the Government. But even if the majority in support of the motion had not been a compact group, it would have been out of accord with the precedents not to have applied to Mr Gladstone. The question whether Mr Gladstone could form a Government could be settled as similar questions had been settled in the past, by asking Mr Gladstone to make the attempt. We need not, for the moment, ask whether Mr Goschen ought to have given advice.<sup>1</sup>

During the general election of 1886 the Queen asked Mr Goschen if she should not send for Lord Salisbury when Mr Gladstone resigned. He replied in the affirmative.<sup>2</sup> This was a week before Mr Gladstone's resignation, and was quite informal. Immediately on receipt of the resignation, the Queen sent for Lord Salisbury. Before the general election of 1892 the Queen explained to her private secretary that in the event of a change of Government she had intended to send first for Lord Rosebery, though after his recent speech (which was so radical as to be "almost communistic"), this was impossible.<sup>3</sup> Sir Henry Ponsonby replied that some time before Lord Rosebery had said that it would be impossible for anyone but Mr Gladstone to form a Government, and that if the Queen sent for any other member of the Liberal Party he would refuse. "If, after refusal, the Queen called on Mr Gladstone, it would do harm to the prestige of the Sovereign, as it would elevate Mr Gladstone into a species of dictator who (*sic*) the Queen was forced to accept."<sup>4</sup> However, Ponsonby talked to Sir William Harcourt and some minor members of the Opposition. When a Gladstonian majority became evident, Ponsonby again went round collecting the views of

<sup>1</sup> See *post*, pp. 35-6.

<sup>2</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 161.

<sup>3</sup> *Ibid.* 3rd Series, II, p. 120. <sup>4</sup> *Ibid.* 3rd Series, II, pp. 121-2.

minor members of the Liberal Party, and especially their views about Mr Gladstone's health.<sup>1</sup> The Queen insisted that if there was an adverse vote in the House of Commons she *must* see Lord Rosebery before anyone else.<sup>2</sup> However, she subsequently thought better of her resolution and sent for Mr Gladstone as soon as Lord Salisbury resigned.<sup>3</sup> On the defeat of the Liberal Government in 1895, the Queen sent at once for Lord Salisbury.

Thus, in every case during Queen Victoria's reign (with the exception of the peculiar case of 1852, when the Opposition had just agreed to coalesce under a new leader), the leader of the Opposition had been sent for. In 1904 Mr Balfour stated to Lord Esher that if a change of Government took place he considered "that the King should send for Campbell-Bannerman, and *not* for Lord Spencer; on the ground that the former is the recognised leader of the Liberal Party while the latter is only the leader of about 20 peers, and that the question as to whether C. B. could or would form a Government is not one that in its primary stages need concern the Sovereign".<sup>4</sup> In 1905 Lord Esher noted:

Great pressure is being put upon the King to send for Spencer and Campbell-Bannerman together and ask their advice. I trust that he will not give way to this temptation, as it would be to give away the most important prerogative of the Sovereign. Although many people think otherwise, there is no precedent for such a step. I have looked through all the precedents for the King in the private archives at Windsor and there is not a single example in the Queen's reign of her asking advice of anyone except the outgoing Minister as to the person upon whom her choice should fall. The obvious duty of the King is to make up his own mind, and the wisest thing he can do is to adhere rigidly to precedent.<sup>5</sup>

These statements are a little too positive. They ignore the fact that the Queen consulted Lord Lansdowne and (informally) the Duke of Wellington in 1851; that she sent for Lord Lansdowne as well as Lord Aberdeen in 1852; that she consulted Mr Goschen in 1885, both by letter and through her private secretary; that she consulted Mr Goschen informally in 1886; and that her private secretary made informal soundings in 1892. Also, if it be accepted that the monarch must send

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, II, pp. 130-32.

<sup>2</sup> *Ibid.* 3rd Series, II, p. 132.

<sup>4</sup> *Esher Papers*, II, p. 56.

<sup>3</sup> *Ibid.* 3rd Series, II, p. 141.

<sup>5</sup> *Ibid.* II, p. 78.

for the leader of the Opposition, he has given away, not retained, a prerogative which the Queen assumed in 1885 that she possessed. A power to consult means a power to choose; absence of a power to consult means a binding obligation to send for the leader of the Opposition. The King did in fact send for Sir Henry Campbell-Bannerman and did not consult (at least formally) any other person. Mr Balfour went through the papers of 1873-4, and Lord Esher provided the King with a memorandum based on the precedents of 1880 and 1895.<sup>1</sup>

The later precedents are those of 1923, 1924 and 1929. Adequate information as to these is necessarily lacking. In each case, however, the King sent for the leader of the Opposition. There is thus a long series of precedents covering a century. In each case the monarch has sent for the leader of the Opposition. The precedent of 1852 is quite exceptional. If there was a leader of the Opposition it was Lord Aberdeen. Neither Lord Palmerston nor Lord John Russell could be said to be the Liberal leader, and the Queen had no real information of the coalition under Lord Aberdeen. She therefore sent for the elder statesmen of the two Opposition parties and commissioned Lord Aberdeen as soon as she had information that both parties were prepared to serve under him. The arguments already given<sup>2</sup> appear to be conclusive. The correct rule was stated by Mr Balfour in 1904, and though the statements of Lord Esher in 1905 were not exact, the advice which he gave was correct. Where the Government is defeated and there is a leader of the Opposition the King must send for him.

The rule has for its corollary the rule that before sending for the leader of the Opposition the monarch should consult no one. If he takes advice first, it can only be for the purpose of keeping out the Opposition or its recognised leader. To try to keep out the Opposition is to take sides in a party issue. To try to defeat the claims of the recognised leader is to interfere in the internal affairs of the chief Opposition party. Lord Salisbury's advice in 1885<sup>3</sup> was quite unsound. The precedents of 1851 and 1855 quoted by the Queen to justify sending for Mr Goschen were not in point. It is true that the Queen saw Lord Lansdowne before she sent for Lord Stanley in 1851. Lord Lansdowne

<sup>1</sup> *Esher Papers*, II, pp. 119, 123.

<sup>2</sup> *Ante*, p. 28.

<sup>3</sup> *Ante*, pp. 31-2.

was leader of the House of Lords. He and Lord John Russell discussed the situation with the Queen before Lord John Russell formally resigned. There was no suggestion that he could or would or should assist the Queen to keep out Lord Stanley. Mr Goschen was not a minister of the resigning Government; he was a member of the Opposition party. The only purpose of a summons to him was to try to discover how a Government of "patriots" or "moderate men" could be formed—that is, how Mr Gladstone's majority could be broken up. The Duke of Wellington was seen informally by the Prince Consort after Lord Stanley's first refusal to form a Government. He was formally summoned after further negotiations had proved fruitless. The precedent of 1855 is even less relevant. The Queen sent at once for Lord Derby, and she saw Lord Lansdowne after Lord Derby refused office.

The events of 1885-6 must therefore be taken as constituting a clear precedent against taking advice when the Government resigns after a defeat in the House of Commons or in the country. They constitute a case in which bad arguments were not followed. The informal consultation of Mr Goschen just before Mr Gladstone's resignation in 1886 may be ignored. What the Queen really wanted to know was whether the Liberal Unionists would join a Conservative Government, so as to keep out the enemy and forbid Home Rule. Sir Henry Ponsonby's reconnaissance in 1892 was partly to find out if Mr Gladstone wanted to undertake the ungrateful task once more, and partly to make clear to everyone that Mr Labouchere would not be allowed any office where he had to "kiss hands".

This rule does not, of course, prevent the King from consulting whom he pleases in other circumstances. Where the Prime Minister dies or resigns personally, the King may have the delicate task of choosing a Prime Minister who can keep the Government together. Where a Government resigns owing to internal dissensions it does not necessarily follow that the Opposition must take office. In neither case is the King necessarily in the best position for making a choice. He must ascertain the view of the Government party in the first case, and the views of all interested parties in the second case. He is therefore entitled to consult whom he pleases, and the precedents give him full liberty.

In the first place, he need not ask for the advice of the retiring Prime Minister. Lord Melbourne's position as the Queen's mentor gave him privileges which his successors did not possess. In 1845, the Queen and Prince Albert had a long discussion with Sir Robert Peel. In 1852 (when, however, the Government resigned through a defeat in the House of Commons), Lord Derby advised the Queen that she should send for Lord Lansdowne. Prince Albert interrupted him, saying that "constitutionally speaking, it did not rest with him to give advice and become responsible for it".<sup>1</sup> In 1855 Lord Palmerston refused to give advice after his defeat, but stated his view of the party situation.<sup>2</sup> On the resignation of Lord Derby in 1868, he advised the Queen to send for Mr Disraeli, without being asked for advice.<sup>3</sup> On Mr Gladstone's resignation in 1894 the Queen did not ask his advice, and he refused to give his opinion to Sir Henry Ponsonby except at the Queen's request.<sup>4</sup> It is stated that on the resignation of Lord Salisbury in 1902 the King, "on his own initiative", sent for Mr Balfour.<sup>5</sup> It is not clear whether Mr Balfour advised the King on the Government's resignation in 1905, but he had previously given his views informally to Lord Esher, who had the ear of the King.<sup>6</sup> Before the resignation of Sir Henry Campbell-Bannerman in 1908, Lord Esher discussed the matter with the King and reported a talk which he had had with Mr John Morley. Lord Esher told Mr Morley that the King would consult no one, but would exercise his prerogative unaided.<sup>7</sup> Later, he notes that Lord Knollys "is anxious to discover the views of the Cabinet. This is impossible. The King must use his own judgment".<sup>8</sup> He supplied the King with the papers of 1865, when Lord Palmerston died while in office. It is unlikely that Campbell-Bannerman advised the King, since the King saw Mr Asquith some time before Campbell-Bannerman resigned.<sup>9</sup>

The Coalition Government of 1915 was obviously formed on Mr Asquith's advice. Mr Asquith advised the King in 1916 to reappoint

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 501. Contrast Lord Salisbury's statement in 1885, *ante* p. 32.

<sup>2</sup> *Life of Lord Granville*, I, p. 293.

<sup>3</sup> *Ibid.* 2nd Series, I, p. 497.

<sup>4</sup> *Life of Gladstone*, III, pp. 512, 513.

<sup>5</sup> *Life of the Duke of Devonshire*, II, p. 280.

<sup>6</sup> *Esher Papers*, II, p. 78.

<sup>7</sup> *Ibid.* II, p. 256.

<sup>8</sup> *Ibid.* II, p. 272.

<sup>9</sup> *Life of Lord Oxford and Asquith*, I, p. 194.

him as Prime Minister in order that he might form a new Government,<sup>1</sup> and it is said that he subsequently advised the King to send for Mr Bonar Law.<sup>2</sup> No information is available as to the formation of the Conservative Government in 1922. On the resignation of Mr Bonar Law in 1923, the retiring Prime Minister wrote to Lord Curzon: "I understand that it is not customary for the King to ask the Prime Minister to recommend his successor in circumstances like the present, and I presume that he will not do so."<sup>3</sup>

The method of forming the National Government in 1931 was peculiar.<sup>4</sup> The Labour Government was in difficulties on account of the financial situation. The majority would not accept a proposal to reduce unemployment insurance benefit; and on Sunday, August 23rd, it authorised the Prime Minister to resign. The King had returned from Balmoral the previous day and on the Prime Minister's advice had summoned the leaders of the Opposition parties. Mr Baldwin and Sir Herbert Samuel had visited the King before the Cabinet meeting. The Government had been in communication with the leaders of the Opposition, and there is nothing to show that this meeting had anything to do with a prospective resignation of the Government. The official announcement explained that the King "wishes to hear from them themselves what the position of their respective parties is".

When Mr MacDonald presented to the King the resignation of the Cabinet, he advised the King to see Mr Baldwin and Sir Herbert Samuel, with Mr MacDonald, the next morning, and the Prime Minister so informed the Cabinet. What happened at this meeting is not exactly known.

What is said is that the King, with whom the Prime Minister had been in constant communication but who never went outside his con-

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, p. 265; Beaverbrook, *Politicians and the War*, II, p. 259.

<sup>2</sup> Addison, *Four-and-a-Half Years*, I, p. 271. But Sir Austen Chamberlain says that either the King did not ask or Mr Asquith did not give advice as to his successor: Chamberlain, *Down the Years*, p. 125.

<sup>3</sup> *Life of Lord Curzon*, III, p. 350.

<sup>4</sup> The following account is taken from Snowden, *Autobiography*, II, pp. 947-54, after checking against Webb, "What Happened in 1931: A Record", 3 *Political Quarterly*, pp. 1-17.

stitutional position, made a strong appeal to him to stand by the nation in this financial crisis, and to seek the support of leading members of the Conservative and Liberal Parties in forming, in conjunction with such members of his own Party as would come in, a united National Government. The King is believed to have made a correspondingly strong appeal to the Liberal and Conservative leaders.<sup>1</sup>

What is certain is that at a Cabinet meeting immediately afterwards Mr MacDonald reported that he had kissed hands as Prime Minister of a Cabinet of individuals, and that Mr Baldwin and Sir Herbert Samuel had agreed to serve.

It is certain that, where a Cabinet resigns owing to internal dissensions, or where a Prime Minister dies or tenders a personal resignation, or where, on the defeat of a Government, the leader of the Opposition is unable or unwilling to form a Government, the King may consult whom he pleases. In 1839 the Queen saw the Duke of Wellington on the "Bedchamber question". In 1851, after Lord Stanley's refusal to form a Government, the Queen saw Sir James Graham, Lord Aberdeen, the Duke of Wellington, and Lord Lansdowne. In 1855, after the Earl of Derby's refusal, she saw Lord Lansdowne, Lord John Russell, Lord Palmerston and Lord Clarendon.

A new factor entered with the death of the Prince Consort in 1861 and the appointment (after an interval) of a Private Secretary. For the Private Secretary, unlike the Prince, could visit political leaders and ascertain their views informally. The Queen made much use of her private secretaries in this way, and they were able to talk with junior ministers and ex-ministers as well as with the party leaders. Indeed, some of the reports to the Queen (as in 1885-6 and 1892) contain little more than the gossip of the clubs—information which must be even less reliable than that produced by "our political correspondent" in the leading newspapers. *The Times* under Delane was frequently better informed than the Queen.

There is in fact no further evidence of the consultation of party leaders and "elder statesmen" in the formation of a Government until

<sup>1</sup> Webb, *op. cit.* p. 9.



1916.<sup>1</sup> The King then saw Mr Bonar Law, Mr Lloyd George, Mr Balfour and Mr Henderson.<sup>2</sup> Thus, there were precedents for the King's action in 1931, and the available information suggests that the formation of the National Government was, at least in respect of the King's action, quite constitutional. Except when the Government resigns after a defeat, he has a choice which he must exercise in such a way as to secure the strongest Government in the minimum time. To do this, he must secure the best information available. The best information as to coherent parties can be obtained from the party leaders. The best information as to parties in dissolution can be obtained from the leaders of the respective groups. Sometimes, on the other hand, the "elder statesmen" who have retired from the political contest can best see the situation as a whole. The King may consult any of these, and he needs no formal advice from a Prime Minister. It is irrelevant (except as evidence of Mr MacDonald's good faith or otherwise) to ask at whose suggestion the National Government was formed.<sup>3</sup>

It is the King's primary duty to find a Government. It is no less the duty of political leaders to assist him to find one. In the Duke of Wellington's famous phrase, "The King's service must be carried on."<sup>4</sup> This duty is threefold. First, the political leader must, if asked, place his views before the King. Mr Gladstone stated to Mr John Morley in 1895, "it would not be consistent with my view of my duty not to advise if invited".<sup>5</sup> Secondly, if the official Opposition succeeds in

<sup>1</sup> There are many cases in which the Queen wrote to Opposition leaders, and in 1910-11 the King saw leaders of the Opposition, with the Prime Minister's consent, in order to ascertain the views of the various parties. These form precedents for the summoning of Mr Baldwin and Sir Herbert Samuel before the resignation of the Labour Government in 1931. But they are of a different nature from the formal consultation preliminary to the formation of a Government; in particular, such consultations are undertaken on the advice of the Prime Minister. See *post* pp. 282-3, 329, 332-4.

<sup>2</sup> *Life of Lord Oxford and Asquith*, II, pp. 273-5; Addison, *Four-and-a-Half Years*, I, pp. 271-2.

<sup>3</sup> Criticisms of the formation of the 1931 Coalition rest upon Mr MacDonald's action in relation to his colleagues: Snowden, *Autobiography*, II, p. 954; Laski, *The Crisis and the Constitution*; Jennings, "The Constitution under Strain", 3 *Political Quarterly*, pp. 194-205.

<sup>4</sup> Duke of Wellington, *Despatches*, New Series, IV, p. 209.

<sup>5</sup> Morley, *Recollections*, II, p. 11.

defeating the Government and so causing its resignation, it is the duty of its leaders to form a new Government or to advise the King as to an alternative. Thirdly, though this must be stated less positively, it is the duty of the Government to remain in office so long as it can do so without infringing constitutional principles.

The second principle is based upon the assumption that party politics is not just a game. It is not even a mere rivalry of policies. It is a contest between two or more groups for the honour of forwarding their rival policies. There are times when opposition is undesirable—or, as some put it, unpatriotic. There are occasions, as with the Irish Nationalist Party, when opposition for the sake of opposition is justifiable. Normally, a party in the House of Commons does not expect to defeat the Government. It hopes that it will persuade enough people outside to give it a majority at an election in the not too distant future. Its opposition is part of its propaganda. But it must take the responsibility of its arguments. It must be ready to accept office if it does succeed in defeating the Government either in the House or in the constituencies. Naturally, it cannot form a Government if it has no prospect of securing sufficient support. Its leaders must in any case assist in the search for a Government that can secure support.

In 1851 the Government's defeat on Mr Locke King's motion had not been due to the action of the Opposition. It was a Radical motion which was not effectively opposed by the rest of the Liberals. Lord Stanley suggested that the Queen should try a coalition between Whigs and Peelites. But if it was clear that no other Government could be formed, "he would feel it his duty as a loyal subject to risk everything, except his principles and his honour, to carry on the Government".<sup>1</sup> Protectionist opposition assumed, as we may put it, that ultimately there must be a Protectionist Government; and though they had taken no part in defeating the Government, the Protectionist Party could not evade the obligations of opposition. The Protectionist Government was accordingly formed in 1852, when the party had supported Lord Palmerston's "tit for tat".

The Conservatives supported Mr Roebuck's motion on the Crimean

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 351.

War in 1855, and so became responsible for the defeat of the Government. The Queen addressed herself to Lord Derby "as the head of the largest party in the House of Commons, and which had by its vote chiefly contributed to the overthrow of the Government".<sup>1</sup> Lord Derby, in the Queen's words, "threw off this responsibility, saying that there had been no communication with Mr Roebuck...". He nevertheless tried to form a Government and, on failing to do so, resigned his commission on the ground that "he would not be able to form such an Administration as could effectively carry on the Government".<sup>2</sup> He formed a Government on the defeat of Lord Palmerston's Government in 1858. He first asked the Queen to reconsider her offer. The Queen's conclusion was that "the resignation of the present Government is the result of a conscientious conviction on their part, that, damaged by the censure passed upon them in the House of Commons, they cannot with honour to themselves, or usefulness to the country, carry on public affairs, and Lord Derby is at the head of the only Party which affords the material of forming a new Government, is sufficiently organised to secure a certain support, and which the country would accept as an alternative for that hitherto in power".<sup>3</sup> Lord Derby then accepted the burden.

On its defeat on the Irish University Bill in 1873 the Liberal Government resigned, and the Queen sent for Mr Disraeli. As an immediate dissolution was not possible, he did not want to take office and suffer the indignity and loss of credit involved in winding up the session with a minority Government,<sup>4</sup> and accordingly refused to form a Government. But he added that "there were instances where a Sovereign had been left without a Government, and in such a case he would, of course, be ready to serve me [the Queen]".<sup>5</sup> There ensued a controversy between Mr Gladstone and Mr Disraeli, with the Queen as intermediary.<sup>6</sup>

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, III, p. 102.

<sup>2</sup> *Ibid.* 1st Series, III, p. 106.

<sup>3</sup> *Ibid.* 3rd Series, III, p. 340.

<sup>4</sup> *Life of Gathorne-Hardy*, I, p. 323; *Life of Disraeli*, III, p. 340.

<sup>5</sup> *Life of Disraeli*, II, p. 549.

<sup>6</sup> Mr Gladstone's letters are given fully in Guedalla, *The Queen and Mr Gladstone*, I, pp. 395-410, and less fully in *Life of Gladstone*, II, pp. 450-52 and 652-3; Mr Disraeli's letters are given in *Life of Disraeli*, II, pp. 548-57, though the most important are also in Guedalla, *The Queen and Mr Gladstone (supra)*.

Mr Gladstone objected that Mr Disraeli's refusal was not in accordance with the principles of our Parliamentary Government:

The vote of the House of Commons... was due to the deliberate and concerted action of the Opposition, with a limited amount of adventitious numerical aid. The division was a Party division, and carried the well known symbol of such divisions in the appointment of Tellers of the Opposition and Government respectively. The vote was given on the full knowledge, avowed in the speech of the leader of the Opposition, that the Government had formally declared the measure on which the vote was impending to be vital to its existence.

Mr Gladstone humbly conceives that, according to the well known principles of our Parliamentary Government, an opposition, which has in this manner and degree contributed to bring about what we term a crisis, is bound to use and to show that it has used its utmost efforts of counsel and enquiry to exhaust all practicable means of bringing its resources to the aid of the country in its exigency.<sup>1</sup>

Mr Gladstone then pointed out that in 1830, 1835, 1841, 1852, 1858, 1859, 1866 and 1868 the party in opposition took office. It failed to do this only in 1832, 1851 and 1855. "But in each of these three cases, the attempt of the opposition to form a Government was not relinquished until after such efforts had been made by its leaders as to carry the conviction to the world that all its available means of action were exhausted."<sup>2</sup> Mr Gladstone added:

It is in Mr Gladstone's view of the utmost importance to the public welfare that the nation should be constantly aware that the Parliamentary action certain or likely to take effect on the overthrow of a Government; the reception and treatment of a summons from Your Majesty to meet the necessity which such action has powerfully aided in creating; and again the resumption of office by those who have

<sup>1</sup> Guedalla, *The Queen and Mr Gladstone*, I, pp. 399-400.

<sup>2</sup> *Ibid.* I, p. 400. Mr Gladstone's statement was not wholly accurate. In 1851, Lord Stanley, on first application, refused to form a Government. He accepted the task only when other applications had failed. Also, there was no such "conviction" in 1851 and 1855. Many Conservatives, including Mr Disraeli, felt aggrieved at Lord Derby's refusal. Mr Gladstone did not quote the case of 1845, when it could hardly be said that the refusal of Lord Grey to serve with Lord Palmerston under Lord John Russell carried conviction that all available means of action had been exhausted. This case is somewhat different in that the Government was not defeated, but merely resigned.

deliberately laid it down,—are uniformly viewed as matters of the utmost gravity, requiring time, counsel and deliberation among those who are parties to them, and attended with serious responsibilities.<sup>1</sup>

Mr Disraeli replied that

though, as a general rule, this doctrine may be sound, it cannot be laid down unconditionally, nor otherwise than subject to many exceptions.

It is undoubtedly sound so far as this: that for an Opposition to use its strength for the express purpose of throwing out a Government, which it is at the same time aware that it cannot replace—having that object in view, and no other—would be an act of recklessness and faction, which could not be too strongly condemned. But it may be safely affirmed that no conduct of this kind can be imputed to the Conservative Opposition of 1873.

If the doctrine in question is carried further; if it be contended that, whenever, from any circumstances, a Minister is so situated that it is in his power to prevent any other Parliamentary leader from forming an Administration which is likely to stand, he acquires, thereby, the right to call upon Parliament to pass whatever measures he and his colleagues think fit, and is entitled to denounce as factious the resistance to such measures—then the claim is one not warranted by usage, or reconcilable with the freedom of the Legislature.<sup>2</sup>

Finally, Mr Disraeli stated that he had consulted his friends, and that they were unanimously of opinion that it would be prejudicial to the interests of the country for a Conservative Administration to conduct affairs in the then House of Commons. He asked what other means were at his disposal, whether he was to open negotiations with a section of the Liberal Party “and waste days in barren interviews, vain applications, and the device of impossible combinations”, or whether he was to make overtures to the Irish.<sup>3</sup>

Mr Disraeli's reply was, in part, special pleading. The reason that a Government cannot compel the House of Commons to pass any legislation it wishes is that an alternative Government is always possible. What Mr Gladstone asked was not that Mr Disraeli should try “im-

<sup>1</sup> *Ibid.* I, p. 402. (The passage has been punctuated in accordance with *Life of Gladstone*, II, p. 451.)

<sup>2</sup> *Life of Disraeli*, II, p. 555.

<sup>3</sup> *Ibid.* II, p. 556.

possible combinations", but that he should take office. Nevertheless, it was sound in substance. A Government cannot give an Opposition the difficult choice of supporting the Government or of taking office at a stage of the Parliamentary time-table when it knows that it cannot advise a dissolution. It cannot turn the rule that an Opposition that opposes must be ready to try to form a Government into a rule that it must take office when it cannot effectively govern.

In 1880 the Queen (with a view to keeping Mr Gladstone out of office) apparently laid great stress upon the duty of Lord Hartington "as leader of the Opposition" to take office. He asked Mr Gladstone for his opinion upon this doctrine. Mr Gladstone said, according to his own account:<sup>1</sup> "The leader, if sent for, was in my opinion bound either to serve himself, or to point out some other course to her Majesty which he might deem to be more for the public advantage, and if that course should fail in consequence of the refusal of the person pointed out, the leader of the party could not leave her Majesty unprovided with a Government, but would be bound in loyalty to undertake the task."

In 1885 Lord Salisbury did not refuse to take office, though an immediate dissolution was not possible owing to the recent passage of a Redistribution Bill consequent upon the third Reform Act. Mr Gladstone had stated, however, that he was willing to assist the Government in the interim period. Lord Salisbury desired a formal note to that effect, but the two leaders could not agree upon its terms. Ultimately, a formula was agreed, and Lord Salisbury formed a Government. In 1895 there was no difficulty about a dissolution. Lord Salisbury thought that the constitutional course was for Lord Rosebery's Government to advise a dissolution, but he accepted office and formed a Government.

In 1905 Campbell-Bannerman considered whether he ought not to refuse office, in order to compel Mr Balfour to advise a dissolution. Lord Ripon pointed out to him that "a refusal on your part to take office on Mr Balfour's resignation would not necessarily involve the resumption of the Government; the King would be perfectly entitled

<sup>1</sup> *Life of Gladstone*, II, pp. 623-4.

to send not for Balfour, but for Lansdowne or Chamberlain".<sup>1</sup> Sir Henry Campbell-Bannerman came to the same conclusion on different grounds and formed a Government. As the Government had not resigned because of a defeat, there was no obligation on him to accept office.

The conclusion seems to be, as Mr Gladstone put it to Lord Hartington in 1880, that it is the duty of the leader of the Opposition to form a Government or to suggest an alternative. But one alternative is that which Mr Disraeli suggested in 1873, namely, the continuance of the existing Government. This alternative does not exist where the House of Commons refuses, by not passing supplies or otherwise, to allow the Government to continue. But a single defeat on a Bill, even if it is made a matter of confidence, does not indicate an intention to follow such a course. Where "tactics" induces the Government to resign rather than to advise a dissolution, as in 1905, the Opposition, too, may play tactics and refuse to accept office. The real duty of the Opposition is to work the Parliamentary system and to see that "the King's service is carried on". A mere refusal by the Government to carry on the King's service is not enough to compel an unwilling Opposition to take office.

Indeed, the case is one of a conflict of rules. For, though it is sometimes the duty of the Opposition to take office, it is sometimes the duty of the Government to continue. There has been less discussion of this point, though it is equally necessary. Government is the duty as well as the right of the majority party. Peel in 1845 had lost his majority (though he had not been defeated) and yet resumed office and repealed the Corn Laws. Lord John Russell in 1851 resumed office. Lord Salisbury in 1885 and 1895, and Campbell-Bannerman in 1905 might have refused office, as Mr Disraeli refused it in 1873. Governments torn by internal dissensions must, if an alternative cannot be found, settle their differences. For it is essential to the parliamentary system that a Cabinet should be formed, and the Cabinet must remain until its successors have been appointed.

<sup>1</sup> *Life of Lord Ripon*, II, pp. 273-4.

## CHAPTER III

# The Formation of a Government

### § 1. *The Offices to be Filled.*

The offices to be filled when a new Prime Minister takes office are some sixty in number.<sup>1</sup> They are not determined by law; there is no legal distinction between a political and non-political office. Some of them, indeed, are survivals of other times and other conditions. A Lord Privy Seal is usually appointed, though there is no Privy Seal office. A Chancellor of the Duchy of Lancaster has about two hours a week of office work. A Lord President of the Council has little more. The chief offices are, however, the key administrative positions. The Chancellor of the Exchequer, the First Lord of the Admiralty, the eight Secretaries of State, the Presidents of the Boards of Trade and Education, the Ministers of Labour, Health, Agriculture and Fisheries, and Transport, and the Postmaster-General, control the main functions of government. Each of them, too, has at least one political subordinate. The First Commissioner of Works, the Lord Chancellor, the Secretary for the Mines Department and the Secretary to the Department of Overseas Trade also have important departmental duties. The Attorney-General, the Solicitor-General and the Lord Advocate for Scotland have duties which are, for the most part, not administrative. The Parliamentary Secretary to the Treasury and the Lords of the Treasury have some departmental duties in the Treasury. They have to sign Treasury warrants. But their main function is to control the proceedings of the House of Commons, and keep the majority together, as Government Whips under the direction of the Prime Minister or leader of the House. In addition, there are five appointments in the Royal Household which are regarded as political offices. The holders of these offices, too, are Whips if they are in the House of Commons, and assist in Government

<sup>1</sup> See the list of the present Government (corrected to 1936) in Appendix II, *post*, pp. 410-15.



business in the House of Lords if they are peers. The office of Paymaster-General involves no duties except assistance to the Government in the House of Lords.

It is a well-settled convention that these ministers should be either peers or members of the House of Commons. There have been occasional exceptions. Mr Gladstone once held office out of Parliament for nine months. The Scottish law officers sometimes, as in 1923 and 1924, are not in Parliament. General Smuts was minister without portfolio and a member of the War Cabinet from 1916 until the end of the War. Mr Ramsay MacDonald and Mr Malcolm MacDonald were members of the Cabinet though not in Parliament from the general election of November, 1935, until early in 1936.

The House of Commons is, however, extremely critical of such exceptions. In 1923 there was constant criticism of the absence of both Scottish law officers, for whom efforts were made to find seats. Eventually the office of Solicitor-General for Scotland was given to a member of the House, though the Lord Advocate remained out of the House for the whole of the short Parliament of 1922-3. In truth, the conduct of Government business in the House of Commons is such an onerous task that the absence of an important minister places a considerable burden on the rest. Even in the House of Lords the representation of the many departments, the piloting of their legislation, and the explanation of their policy demands the presence of a substantial number of ministers. Practical convenience as well as constitutional convention therefore compels the Prime Minister to confer office only upon members of Parliament or peers. Apart from such exceptions as those of 1924 and 1929, when the Lord Advocate had a non-political office owing to the paucity of Scots lawyers supporting the Labour Government, ministers are out of Parliament only while they are trying to find seats. If they cannot, and are unwilling to be created peers, they resign.

The nomination of ministers rests with the Prime Minister. This does not mean that the Sovereign may not have considerable influence. Examples will presently be cited where Royal influence has even excluded persons from office. But as against the King the Prime Minister has the final word. He must have a Government which can work to-

gether and which can secure the support of the House of Commons. If he says that for this reason he must have the assistance of a certain person, the King must either give way or find another Prime Minister. The King cannot commission another member of the same party; for that is to interfere with the internal affairs of the party and is contrary to precedent. He must, therefore, find another party which can secure the support of the House of Commons, and it must be a strange House that is willing to support alternative Governments.

Nor does the rule mean that the Prime Minister may not consult his friends or that, if he does not, he will not listen to their representations. He, too, has to consider the unity of his Government and the views of the House of Commons. It is unnecessary to quote examples of prior discussions, but cases can be quoted in which the appointment of ministers has been brought before the Cabinet.

Finally, it is necessary to point out, because confusion has arisen on this matter, that though the Prime Minister nominates or, technically, recommends, it is the King who appoints.<sup>1</sup> Consequently, though a new Prime Minister may recommend that one minister be superseded by another, it is not necessary for him to recommend that an existing minister be reappointed. That minister remains in office until his appointment is terminated.

## § 2. *The Influence of the Sovereign.*

Speaking in 1850, Sir Robert Peel said: "The power of a [Prime] Minister to appoint or remove his colleagues is by no means an absolute one. . . . Speaking generally, the Crown would certainly be influenced by the advice of the Prime Minister in the selection of his colleagues. The charge of forming a Government is left almost exclusively with the Prime Minister."<sup>1</sup> This is, perhaps, an understatement. But it is certain that, during the Queen's reign at least, the Crown exercised considerable influence on appointments.

In 1841 Prince Albert's private secretary noted the following advice by Lord Melbourne to the Queen: "He would advise the Queen to adopt the course which King William did with Lord Melbourne in

<sup>1</sup> Report from the Select Committee on Official Salaries (1850), p. 36.

1835, viz. desiring Lord Melbourne, before His Majesty approved of any appointments, to send a list of those proposed even to the members of every Board, and the King having them all before him expressed his objections to certain persons, which Lord Melbourne yielded to.”<sup>1</sup> This was the practice followed by the Queen. When Lord Stanley was trying to form a Government in 1851 he stated that he would have to nominate Mr Disraeli as a Secretary of State. The Queen said that “she had not a very good opinion of Mr Disraeli on account of his conduct to poor Sir Robert Peel, and what had just happened did not tend to diminish that feeling; but she felt so much Lord Stanley’s difficulties that she would not aggravate them by passing a sentence of exclusion on him”.<sup>2</sup> The Queen had already said that “she would herself make it a condition with Lord John [Russell] that [Lord Palmerston] should not be again Foreign Secretary”.<sup>3</sup> When Lord Stanley failed to form a Government, Lord John Russell undertook not to reappoint Lord Palmerston.<sup>4</sup> But later he said that it was quite impossible for him either to expel Lord Palmerston or to quarrel with him, and promised instead to move Lord Palmerston in the Easter recess or to resign himself.<sup>5</sup> Finally, he said that he could not undertake to make any change at the Foreign Office.<sup>6</sup> Palmerston was, however, dismissed for other reasons later in the year, and never again became Foreign Secretary. After his dismissal, the Queen said that “she must reserve to herself the unfettered right to approve or disapprove the choice of a minister for this office” and declared that she was willing to accept Lord Granville.<sup>7</sup> But the Cabinet decided in favour of Lord Clarendon and, after protests, the Queen acquiesced in Lord Clarendon’s being invited, believing that he would refuse, as he did.<sup>8</sup>

In 1852 Lord Derby wished to propose Lord Palmerston as Chancellor of the Exchequer. He would not propose him for the Foreign Office, in view of his dismissal from that post not long before and the “well known personal feelings of the Queen”. The Queen replied that

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, I, p. 339.

<sup>2</sup> *Ibid.* 1st Series, II, p. 365.

<sup>4</sup> *Ibid.* 1st Series, II, p. 376.

<sup>6</sup> *Ibid.* 1st Series, II, p. 381.

<sup>8</sup> *Ibid.* 1st Series, II, pp. 419–20.

<sup>3</sup> *Ibid.* 1st Series, II, p. 354.

<sup>5</sup> *Ibid.* 1st Series, II, p. 377.

<sup>7</sup> *Ibid.* 1st Series, II, pp. 415–16.

she "would not, by refusing her consent, throw additional difficulties in Lord Derby's way; she warned him, however, of the dangerous qualities of [Lord Palmerston]".<sup>1</sup>

Later in 1852 the Queen's objection kept Mr Bernal Osborne out of the office of Under-Secretary of State for Foreign Affairs, and he became Secretary of the Admiralty.<sup>2</sup> In 1861 the Queen objected to the appointment of Mr Layard as Under-Secretary of State for Foreign Affairs. Lord Palmerston was insistent, and at last the Queen gave way.<sup>3</sup> In 1866 Lord Russell nominated Mr Goschen as Chancellor of the Duchy of Lancaster with a seat in the Cabinet. The Queen thought that, as Mr Goschen had no ministerial experience, jealousy might be created, and she asked Lord Russell to consult the Cabinet. The Cabinet acquiesced in the proposal.<sup>4</sup> On the formation of Lord Derby's Government later in the same year, she desired to object to Lord Derby's nomination of his son, Lord Stanley, to the Foreign Office, but found difficulty in putting her objection to the father, and Lord Stanley was appointed.<sup>5</sup>

The Queen's personal objections became more frequent after the second Reform Act, by which time she had definitely adopted what she would have called "anti-democratic" principles and had come under the sway of Mr Disraeli's personality. As soon as Mr Disraeli was defeated in 1868, General Grey saw Dean Wellesley and Lord Halifax in the hope that they would influence Mr Gladstone not to appoint Lord Clarendon to the Foreign Office; and General Grey personally made the same objection when Mr Gladstone was appointed. Mr Gladstone agreed to try to persuade Clarendon to take some other office, but Clarendon refused the alternative and accordingly was appointed.<sup>6</sup> In 1872 the Queen's objection prevented Mr Gladstone from appointing the Duke of Somerset as Chancellor of the Duchy of Lancaster.<sup>7</sup>

Before Mr Disraeli resigned in 1880 the Queen asked Sir Henry Ponsonby to see Lords Hartington and Granville and to impress upon

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 447.

<sup>2</sup> *Ibid.* 1st Series, II, p. 514.

<sup>4</sup> *Ibid.* 2nd Series, I, pp. 294-5.

<sup>6</sup> *Ibid.* 2nd Series, I, pp. 555-66.

<sup>7</sup> Guedalla, *The Queen and Mr Gladstone*, I, p. 348.

<sup>3</sup> *Ibid.* 1st Series, III, pp. 567-70.

<sup>5</sup> *Ibid.* 2nd Series, I, pp. 352-3.

them that she would have nothing to do with Mr Gladstone, that "there must be no democratic leaning, no attempt to change the Foreign Policy... , no change in India, no hasty retreat from Afghanistan, and no cutting down of estimates", and that she would not accept Mr Robert Lowe as minister, but that she would allow Sir Charles Dilke to take subordinate office if absolutely necessary.<sup>1</sup> Mr Gladstone became Prime Minister. She accepted Mr Childers at the War Office and Lord Selborne as Lord Chancellor, though with reluctance. She refused to accept Lord Fife as Lord Chamberlain on account of his youth. Before agreeing to the appointment of Mr Joseph Chamberlain she "would wish to feel *sure* that Mr Chamberlain had never spoken disrespectfully of the Throne or expressed openly Republican speeches". Before accepting Sir Charles Dilke's appointment as Under-Secretary at the Foreign Office, she insisted "that he should give a written explanation, or make one in Parliament on the subject of his very offensive speeches on the Civil List and Royal Family".<sup>2</sup>

On his resignation in 1886 Lord Salisbury told the Queen that she could object to any of Mr Gladstone's appointments, such as Lord Granville.<sup>3</sup> The Queen summoned Mr Gladstone verbally through Sir Henry Ponsonby so that Ponsonby could explain her views. Ponsonby explained that the Queen would not accept Sir Charles Dilke (who had been co-respondent in a divorce suit).<sup>4</sup> Mr Gladstone did not nominate him. Mr Gladstone proposed Mr Childers for the War Office, but the Queen "positively refused" this; and Mr Gladstone appointed him to the Home Office.<sup>5</sup>

In 1892 the Queen told Sir Henry Ponsonby that "she positively refuses to take either Sir Charles Dilke or... Mr Labouchere. To these,

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 71-6.

<sup>2</sup> Guedalla, *The Queen and Mr Gladstone*, II, pp. 85-91; *Letters of Queen Victoria*, 2nd Series, III, pp. 84-90. In 1882 Mr Gladstone desired to appoint Sir Charles Dilke as Chancellor of the Duchy of Lancaster. The Queen was resigned to his getting into the Cabinet, but objected to the Duchy being given him, since he would be in personal contact with her. Mr Gladstone then suggested that Mr Chamberlain should take the Duchy and Sir C. Dilke go to the Board of Trade. The Queen objected to this, and Dilke became President of the Local Government Board, Mr Dodson taking the Duchy: *Life of Sir Charles Dilke*, I, pp. 492-5.

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 709.

<sup>4</sup> *Ibid.* 3rd Series, I, p. 28.

<sup>5</sup> *Ibid.* 3rd Series, I, pp. 38, 42.

however, she must add Lord Ripon not to have *anything* to do with *India*. Lord Kimberley she is also much against for India, and certainly on no account as Viceroy".<sup>1</sup> Mr Gladstone did not propose office for Sir Charles Dilke, but he was anxious to appoint Mr Labouchere. The Queen's main objection, apparently, was that Mr Labouchere owned and, in theory, edited *Truth*. The Queen's objection was strong enough to keep him out of office altogether.<sup>2</sup> Lord Ripon went to the Colonial Office, but Lord Kimberley was appointed to the India Office.

If there are more recent precedents they have not been published. It should be noted that the Queen never carried too far any objections on political grounds. No Prime Minister dared after 1851 to suggest Lord Palmerston for the Foreign Office, but probably the Queen would have acquiesced if the political situation had warranted the proposal, or Lord Palmerston had been less good humoured. Mr Bright was at first kept off the Privy Council by the Queen, but later became a Cabinet minister. Mr Chamberlain was too forceful a politician to be kept out by the Queen. Sir Charles Dilke reached Cabinet rank, but was kept out of further advancement, in spite of his great ability, because of the divorce case in which he was cited. Mr Labouchere was kept out of office altogether, but he had little political following in spite of his very great ability. The objections in the cases both of Dilke and of Labouchere were not placed on political grounds. The Queen, also, had considerable influence on the actual distribution of offices, even more than appears from the above recital.

### § 3. *The Influence of Colleagues.*

The influence of the Prime Minister's colleagues is less easy to assess. Mr Gladstone stated positively in 1882 that the Cabinet had no right to be consulted. > "I can affirm with confidence that the notion of a title in the Cabinet to be consulted on the succession to a Cabinet office is absurd. It is a title which Cabinet ministers do not possess. During thirty-eight years since I first entered the Cabinet, I have never known

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 120.

<sup>2</sup> *Ibid.* 3rd Series, II, p. 150.

more than a friendly announcement before publicity, and very partial consultations with one or two, especially the leaders in the second House.”<sup>1</sup> This statement was more emphatic than the facts warranted, for examples are not uncommon.

(In 1847 the Cabinet was consulted by Lord John Russell on the appointment of Lord Clarendon as Lord-Lieutenant of Ireland.<sup>2</sup>) When Lord Auckland died at the end of 1848, Lord John Russell asked the views of the Cabinet as to replacing him at the Admiralty by Sir James Graham. The Cabinet agreed, but Sir James Graham refused the offer.<sup>3</sup> On the dismissal of Lord Palmerston from the Foreign Office in 1851 the Cabinet nominated Lord Clarendon as his successor. Lord John Russell, on the Queen’s insistence, had proposed Lord Granville. “The Queen protested against the Cabinet’s taking upon itself the appointment of its own members, which rested entirely with the Prime Minister and the Sovereign, under whose approval the former constructed his Government.”<sup>4</sup> Nevertheless, in the belief that Lord Clarendon would refuse, the Queen authorised Lord John to write to Lord Clarendon, who in fact refused.<sup>5</sup>

The Duke of Argyll said that Lord Palmerston always consulted the Cabinet on Cabinet appointments,<sup>6</sup> and there is evidence in support. Mr Gladstone himself suggested, on the formation of Lord Palmerston’s Government in 1855, that a certain minor appointment should be considered by the Cabinet.<sup>7</sup> On the resignation of Mr Gladstone and other Peelites in the same year, Lord Palmerston consulted the Cabinet as to whether he should approach Lord John Russell and the Whigs or Lord Derby and the Tories. The Cabinet decided on the former.<sup>8</sup> He also consulted them as to whether Sir George Cornwall Lewis should succeed to Mr Gladstone’s office.<sup>9</sup> On the death of Sir William Moles-

<sup>1</sup> *Life of Gladstone*, III, p. 101.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, II, p. 143.

<sup>3</sup> Greville, *Memoirs*, 2nd Series, III, p. 259.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, II, p. 419.

<sup>5</sup> *Ibid.* 1st Series, II, pp. 418–22.

<sup>6</sup> Duke of Argyll, *Autobiography and Memoirs*, II, p. 77.

<sup>7</sup> Guedalla, *Gladstone and Palmerston*, p. 107.

<sup>8</sup> Duke of Argyll, *Autobiography and Memoirs*, I, p. 539.

<sup>9</sup> *Life of Lord Clarendon*, II, p. 71.

worth in the same year, Lord Palmerston again consulted the Cabinet as to whether he should approach Lord Stanley.<sup>1</sup>

In 1866, on the appointment of Mr Goschen as Chancellor of the Duchy of Lancaster, Lord Russell, on the Queen's suggestion, asked the Cabinet whether they agreed with the proposal, since Mr Goschen had not held minor office.<sup>2</sup> Finally, just before the general election of 1923, Mr Baldwin consulted the Cabinet as to whether he should appoint Lord Birkenhead and Mr Austen Chamberlain as ministers without portfolio. There being objections, the appointments were not made.<sup>3</sup>

These are all exceptional cases. In most of them the proposed appointment involved going outside the party in power. Also, consultation with the Cabinet is possible only where there is a Cabinet. It is not possible where a Cabinet is being formed. But consultations with other leaders of the Prime Minister's party are, usually, inevitable. The Prime Minister must secure a coherent Cabinet. He must, as far as possible, avoid personal antagonisms. Mr Gladstone and Mr Disraeli were autocrats. They dominated their Cabinets so effectively that they had almost complete power of choice. Even so, Sir Charles Dilke and Mr Chamberlain, by threatening to give independent support (which meant cross-fire from the back benches) forced Mr Chamberlain into the Cabinet in 1880. Sir Robert Peel necessarily consulted the Duke of Wellington. Lord John Russell necessarily consulted Lord Lansdowne. Lord Aberdeen had a long tussle with Lord John Russell. The Liberal Imperialists had much to say in the formation of Campbell-Bannerman's Government. Mr Asquith in 1915 had to consult Mr Bonar Law. Mr Lloyd George and Mr Bonar Law divided the spoils in 1916. In 1929 the major appointments were settled by Mr MacDonald, Mr Snowden, Mr Clynes, Mr Henderson and Mr Thomas. Moreover, an individual minister may demand to know who are to be his colleagues, and to refuse to serve if he disapproves. Lord Grey in 1845 prevented the formation of a Whig Government by refusing to serve with Lord Palmerston at the Foreign Office.

<sup>1</sup> Duke of Argyll, *Autobiography and Memoirs*, I, p. 590.

<sup>2</sup> *Letters of Queen Victoria*, 2nd Series, I, pp. 294-5.

<sup>3</sup> *Life of Lord Birkenhead*, II, p. 232.



Most of the leading party members, indeed, choose themselves. The nucleus of the Cabinet exists before the Prime Minister begins to draw up lists. His task is to give these leaders appropriate places. But they themselves have much to say about their own offices. Lord Palmerston (until 1852) would have nothing but the Foreign Office. Lord Clarendon in 1868 would have nothing but the Foreign Office. Lord John Russell in 1852 insisted on being minister without portfolio (after a few weeks at the Foreign Office). Consequently, the Prime Minister's free choice applies generally only to the less important Cabinet posts and to minor offices.<sup>1</sup>

In respect of minor offices, however, he has to consider the views of the heads of departments. Speaking of a proposal to appoint an Under-Secretary in 1880, Mr Gladstone said: "The position of the Crown, and also of the Prime Minister, with regard to these appointments, is peculiar. They are the appointments of the Secretary of State. I learn from Lord Granville that he was sent for by Lord Palmerston, not by Lord Melbourne, when he was made Under-Secretary at the Foreign Office." Here Sir William Harcourt, as Home Secretary, nominated Mr Leonard Courtney as Under-Secretary, and Mr Gladstone said: "I should hardly be able to urge on the Secretary of State with due force the withdrawal of this nomination."<sup>2</sup> Information on this point is meagre. It is clear, however, that Sir Robert Peel and not Lord Aberdeen appointed Mr Gladstone as Under-Secretary of State for the Colonies in 1835.<sup>3</sup> In 1859 Lord Palmerston, as Prime Minister, appointed Lord de Grey as Under-Secretary of State for War.<sup>4</sup> The appointment is vested technically in the Secretary of State. But the King's pleasure is always taken by the Prime Minister, and the modern

<sup>1</sup> But, as an example of the Prime Minister's free choice, see the appointment of Brigadier-General C. B. Thomson as Secretary of State for Air in 1924. He had fought several elections unsuccessfully but had no other political experience. He had considerable ability, but his chief qualification was his personal friendship with Mr MacDonald. On this occasion Mr MacDonald retired to the remote fastness of Lossiemouth and consulted no one, except Thomson, who was unknown to the great majority of the political leaders and really knew little about Parliament, politics, or the Labour Party. See *Life of Lord Thomson of Cardington*, pp. 149-51.

<sup>2</sup> Guedalla, *The Queen and Mr Gladstone*, II, pp. 130-31.

<sup>3</sup> Lady Frances Balfour, *Life of Lord Aberdeen*, II, p. 19.

<sup>4</sup> *Life of Lord Ripon*, I, p. 142.

practice is the same as for Permanent Under-Secretaries. The Prime Minister in substance makes the appointment, but he consults the minister under whom the junior minister will work.

§ 4. *The Allocation of Offices.*

The Prime Minister's free choice is further limited by the necessity of allocating offices between the House of Commons and the House of Lords. It is provided by law that not more than six Secretaries of State nor more than seven Under-Secretaries of State shall sit in the House of Commons. On the other hand, certain offices are usually held by members of the House of Commons. Since the House of Commons has sole responsibility for finance, the Chancellor of the Exchequer, the Financial Secretary to the Treasury and the Financial Secretary to the War Office must be in that House. All the Whips must be in the House of Commons, so that the Parliamentary Secretary and the Junior Lords of the Treasury must be in that House. Mr Gladstone as Chancellor of the Exchequer insisted in 1860 that the heads of the great spending departments—then the War Office and the Admiralty—should be in the House of Commons, and Lord de Grey was not appointed Secretary of State for War for that reason.<sup>1</sup> But he succeeded to that office on the death of Sir George Cornewall Lewis in 1863.<sup>2</sup> Lord John Russell in 1865 also said that the Secretary of State for War ought to be in the House of Commons, since he was successor to the Secretary at War (who had been concerned with finance and was therefore in the House of Commons). He proposed to replace Lord de Grey by Lord Hartington, but eventually gave way to pressure and allowed Lord de Grey to remain.<sup>3</sup> Two months later, Lord Hartington went to the War Office, and Lord de Grey to the India Office.<sup>4</sup> In 1868 Mr Gladstone again refused to allow Lord de Grey to return to the War Office, and made him Lord President of the Council.<sup>5</sup> In 1885, however, Lord Ripon (as he had now become) became First Lord of the Admiralty.<sup>6</sup>

It is clear from recent experience that no such rule exists. Lord Lansdowne was at the War Office in 1895, Lord Kitchener in 1914-16.

<sup>1</sup> *Life of Lord Ripon*, I, p. 180.

<sup>3</sup> *Ibid.* I, p. 212.

<sup>5</sup> *Ibid.* I, pp. 222-3.

<sup>2</sup> *Ibid.* I, p. 191.

<sup>4</sup> *Ibid.* I, p. 215.

<sup>6</sup> *Ibid.* II, p. 180.

Lord Derby succeeded Mr Lloyd George in 1916, and was also at the War Office under Mr Bonar Law and Mr Baldwin. Lord Crewe held the office in 1931, and Lord Hailsham from 1931 to 1935. The First Lord of the Admiralty has frequently been a peer.<sup>1</sup> Also, these two offices are no longer the only great spending departments. The exclusion, if it were applied, would be equally relevant to the Board of Education and the Ministries of Labour, Health, Transport and Pensions. The Lord Chancellor must, however, be in the House of Lords, whether a peer or not. In practice he is always made a peer.

If the head of a department is in the House of Lords, his Under-Secretary or Secretary must be in the House of Commons. The reverse is not true. The few heads of departments in the House of Lords are supported by the Lord President of the Council, the Lord Privy Seal or the Paymaster-General (if any of these is a peer) and by the chief Household officers. The responsibility of answering for the various unrepresented departments is divided among the holders of these offices.

The offices to be filled by the Prime Minister are not precisely defined in number. Those which involve executive action must be provided for, though this can frequently be done by royal warrant transferring functions to other ministers. For instance, the offices of Chancellor of the Duchy of Lancaster and Paymaster-General are sometimes not filled. Neither occupies much time. Accordingly, the former is usually filled by a minister whose advice is required in Cabinet, or who is required to undertake special duties such as those connected with unemployment or the League of Nations. The latter office is generally filled by a peer whose main function is to act for several departments in the House of Lords. Again, there is no legal obligation to appoint eight Secretaries and nine Under-Secretaries of State. The office of Secretary of State is a single office, and any such Secretary can act for the rest.

Further, the Prime Minister can, subject to certain restrictions, create new offices. He cannot, without legislation, add to the number of Secretaries and Under-Secretaries of State in the House of Commons. But, provided that Parliament will vote the money, he can create other new offices. He can, too, create unpaid offices. But no new office

<sup>1</sup> As in 1935-6.

(except that of Secretary of State) carries legal duties without legislation.

The House of Commons has, however, generally shown itself antagonistic to the creation of new offices, especially when such creation has a political motive.<sup>1</sup> It is, for instance, suspicious of ministers without portfolio. The institution is less necessary in the British than in most Cabinets. For the Lord Privy Seal has no administrative duties; the functions of the Lord President of the Council and the Chancellor of the Duchy of Lancaster are light; and the work of the First Commissioner of Works is not heavy. Thus, the Prime Minister has at his disposal three or four offices which can be filled by statesmen whose advice in Cabinet is desired, but who are unwilling or unable to undertake heavy administrative work. Alternatively, these posts can be filled by statesmen undertaking special work. The Lord Privy Seal in the Labour Government of 1929 to 1931 was primarily concerned with the development of schemes for relieving unemployment. In other Governments, either the Lord Privy Seal or the Chancellor of the Duchy has sometimes been concerned with League of Nations affairs.

Ministers without portfolio are, nevertheless, not unknown. The Duke of Wellington sat in the Cabinet of 1841-6 and led the House of Lords, without office. In 1852 Lord John Russell refused to take office, and insisted on leading the House of Commons. The chief objection raised to this course was that, as he would not hold an "office of profit" he would have, as Prince Albert put it, "slipped into office without having gone through the popular ordeal of a re-election".<sup>2</sup> He proposed to remove this reproach by accepting the Chiltern Hundreds. But the Prince Consort still held it unconstitutional to lead the House of Commons as "an irresponsible person" without office.<sup>3</sup> Lord Aberdeen's view was that the Duke of Wellington was "an exception to all rule; moreover, the Lords are not the Commons, and the principles of popular election being necessary in confirmation of the choice of the Crown where ministers in the House of Commons are concerned does not apply".<sup>4</sup> Sir James Graham said that, though Russell might accept

<sup>1</sup> Recent experience suggests a doubt on this point; cf. the appointments of Mr. Eden and Lord Eustace Percy in 1935, and of Sir T. Inskip in 1936.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, II, p. 511.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Life of Sir James Graham*, II, p. 195.

the Chiltern Hundreds others might not accept the great constitutional principle implied in seeking re-election. "He will owe nothing to the favour of his Sovereign, while he wields the whole power of the democratic body. He will not be on equal terms with his colleagues. His relations to the country will not be less anomalous. His power will be great, his immediate responsibilities small. He holds no office and presents no assailable front; yet he may sway the Counsels of the State in the most fatal direction."<sup>1</sup> Lord Palmerston had a more cynical reason. "Is it not worth while to consider whether it is expedient thus to set the example of gratuitous public service?... If the extensive duties of leader of the House of Commons can be performed without salary, why should any public officer have any?"<sup>2</sup> Lord John Russell yielded to pressure and accepted the Foreign Office until the meeting of Parliament. Within a few weeks he resigned that department, and remained as leader of the House without office until June, 1854, when he became Lord President of the Council.

The arguments against Lord John Russell appear specious, and are of no weight now that ministers do not need to seek re-election on appointment. Nevertheless, ministers without portfolio have not been frequent. Lord Lansdowne was leader of the House of Lords, without office, in Lord Palmerston's Government of 1855 to 1858. Mr Spencer Walpole was in the Cabinet without office after his resignation from the Home Office in 1867.<sup>3</sup> Between 1915 and 1921 there were ten ministers without portfolio, and eight of them received salaries. But those who received salaries were appointed after 1917, when a temporary Act suspended the duty to seek re-election.<sup>4</sup> They included the members of the War Cabinet, other than the Prime Minister and the Chancellor of the Exchequer. In 1921 there was a debate on the subject in the House of Commons.<sup>5</sup> After saying that war-time conditions were necessarily exceptional, Mr Lloyd George, then Prime Minister, explained that after the war the pressure of business made it necessary to

<sup>1</sup> *Life of Sir James Graham*, II, p. 196.

<sup>2</sup> *Later Correspondence of Lord John Russell*, II, p. 119.

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 145. Mr Gathorne-Hardy sat in the Cabinet in 1866, though his commission as President of the Poor Law Board was not ready: *Life of Gathorne-Hardy*, I, p. 191.

<sup>4</sup> 143 H.C. Deb. 5 s., 596-7.

<sup>5</sup> *Ibid.* 1592-1652.

have an additional minister without departmental duties. He explained that Mr G. Barnes had largely devoted himself to inter-departmental questions which affected the industrial situation, and co-ordinated the work of five or six departments. Sir L. Worthington-Evans had been chairman of many Cabinet committees, and had devoted himself especially to the study of German indemnities, the financial consequences of Home Rule, and unemployment. Dr Addison, who who was the then minister without portfolio, was chairman of four Cabinet committees; and a member of six others.

Nevertheless, the feeling of the House was clearly that they had had enough of these war-time expedients, and the Prime Minister agreed that Dr Addison's term of office should end with the then session of Parliament. From 1921 to 1935 there was no minister without portfolio. In the third National Government (1935), Lord Eustace Percy and Mr Anthony Eden were ministers without portfolio, the latter being concerned (with the collaboration of the Foreign Secretary) with League of Nations affairs.<sup>1</sup> But on the resignation of Sir Samuel Hoare from the Foreign Office in December, 1935, Mr Eden was appointed to that post and his own post of "Minister without Portfolio and for League of Nations Affairs" was left unfilled.<sup>2</sup>

The examples are all exceptional. The Duke of Wellington, as Lord Aberdeen rightly said, was an exception to all rules. The Governments of 1852-4, 1915-21, and of the present time, were coalitions, in which special provision had to be made for party leaders, and special relations with Parliament were necessary. Lord Lansdowne in 1855 was an elder statesman of great authority, whose age and ill-health unfitted him for anything except occasional consultation, but whose support was a source of political strength to the Government.

### § 5. *The Cabinet.*

The Prime Minister has not merely to determine what posts he shall fill and to find persons to fill them; he must, also, determine who shall be in the Cabinet. In filling the offices he has, for the most part, de-

<sup>1</sup> Any legal difficulty was overcome by legislation.

<sup>2</sup> And Lord Eustace Percy resigned after a few months. The Minister for the Co-ordination of Defence is not a minister without portfolio. His salary is provided by a Consolidated Fund Act, and an Act of 1935 prevents him from being disqualified from sitting in the House of Commons.

terminated the membership of the Cabinet. The Lord President of the Council, the Lord Privy Seal, the eight Secretaries of State, the Chancellor of the Exchequer, the Presidents of the Boards of Trade and Education, the First Lord of the Admiralty, and the Ministers of Health, Labour, and Agriculture and Fisheries, are always in the Cabinet. With himself, these make a Cabinet of eighteen persons. Disraeli in 1874 was able to govern with a Cabinet of twelve. The growing pressure of business has made such small Cabinets impossible, and twenty is now the minimum.<sup>1</sup>

Apart from the eighteen ministers mentioned above, it is usually necessary to have at least one other minister without substantial departmental duties. For this there are several reasons. The reason most commonly given for the existence of such sinecure or semi-sinecure offices as those of Lord Privy Seal and Chancellor of the Duchy of Lancaster, and for the appointment of ministers without portfolio, is that the modern Cabinet operates very largely through committees. The fact is true, but the conclusion is in large measure untrue. For reasons which are set out in Chapter ix, the members of Cabinet committees are usually departmental ministers. The Chancellor of the Exchequer, who, next to the Secretary of State for Foreign Affairs, is usually the most overworked minister, is called upon to sit on more committees than any other minister. The true reasons are not so simple. First, it is necessary to place in the Cabinet every political leader of real standing, especially if he has a personal following among the members of his party. Secondly, a political leader of real character can make a nuisance of himself if he is not in the Cabinet. Whether deliberately or not, he will usually be found leading the more discontented element in the Government party. If he has views of his own, he will not always agree with Cabinet decisions, since he has not taken part in the process of compromise by which such decisions are reached. If he is in the Cabinet, he accepts decisions which he would not have reached by the exercise of his own unaided intelligence. Having taken part in the decision, he is effectively muzzled. It is true that a minister of out-

<sup>1</sup> The War Cabinet of 1914-19 (see pp. 232-40) and the National Cabinet of 1931 were smaller, but were due to peculiar and temporary causes.

standing personality and energy who is not in charge of a department can be as great a nuisance in the Cabinet as outside. But of the two evils opposition within is the less. Thirdly, there are some ministers who have no administrative capacity, but whose counsel is useful. John Bright, for instance, was a bad President of the Board of Trade, but the office of Chancellor of the Duchy of Lancaster suited him very well, because he could do no harm administratively, and in the Cabinet he represented a definite section of public and party opinion. Finally, and for much the same reason, an "elder statesman" can be of great use in the Cabinet, though he cannot be expected to undertake the burden of a large office. The first Duke of Wellington, the Marquis of Lansdowne in Aberdeen's Government and another Marquis of Lansdowne after 1915, are obvious examples.

For one or more of these reasons, the Lord Privy Seal almost always, and the Chancellor of the Duchy of Lancaster usually, are members of the Cabinet. Sometimes there is a minister without portfolio. Sometimes, too, a younger minister becomes sufficiently prominent to induce the Prime Minister to invite him into the Cabinet. The First Commissioner of Works, the Postmaster-General, and the Minister of Transport are sometimes given Cabinet rank. In the Government of 1924-9 Sir Douglas Hogg, the Attorney-General, like some of his predecessors was in the Cabinet. In view of his quasi-judicial functions and of his duties in the courts, this step did not secure universal acceptance, though Sir Douglas Hogg's political standing made it necessary. It is, however, a little difficult to see any argument against putting the Attorney-General in the Cabinet which does not apply, *a fortiori*, to the Lord Chancellor.

Strictly, it is not necessary to take the King's pleasure as to the promotion of a minister to Cabinet rank. The Cabinet is not a legal entity, and Cabinet rank is not due to an office. A member of the Cabinet, as such, has no office. He is invited to attend by a purely informal note from the Prime Minister. For the Cabinet is merely a private meeting of the more important ministers. It is, however, the rule that Cabinet ministers should be sworn of the Council, so as to apply to them the Privy Councillor's oath. Since this involves an appointment, the King's consent must be obtained. When the King is "advised" to admit a minister to the Privy Council, it will be explained to him that the



minister has been admitted to the Cabinet, and he can then make any observations he thinks fit.

§ 6. *The Change of a Prime Minister.*

Unless the Prime Minister desires to dispense with a salary, he must himself take some office. For the title of Prime Minister does not belong to an office, and it carries no salary.<sup>1</sup> Usually, the Prime Minister is First Lord of the Treasury. This office gives him the Treasury patronage, places him in control of the Whips, who are junior Treasury ministers, and enables him to make use of the Treasury officials without difficulty. He takes this office and, with it, the functions of Prime Minister, as soon as he kisses hands. Logically, therefore, the retiring Prime Minister goes out of office, and the old Cabinet is dissolved.

The first consequence is that all ministerial offices are placed at the Prime Minister's disposal. This is so even if the "new" Prime Minister is the "old" Prime Minister; that is, when the Prime Minister is commissioned to form a new Government. This happened, for instance, when the Liberal Government resigned in 1915. Mr Asquith was commissioned to form a new Government and formed a coalition. Similarly, when the Labour Government resigned in 1931, Mr MacDonald was commissioned to form a new Government and accordingly formed the first National Government. This was a temporary Government, and, after the general election of 1931, the Government was reconstructed as the second National Government.

The offices are similarly at the new Prime Minister's disposal when the former Prime Minister dies or resigns. Usually, the new Prime Minister requests most of his colleagues to remain in their existing offices. But, subject to all the limitations on his freedom of choice set out above, he can alter or reconstruct the Government as he pleases. On the death of Lord Palmerston in 1865 the Cabinet met and Lord Russell asked for their support, but he made some modification in the distribution of offices.<sup>2</sup> On the resignation of Lord Derby in 1868 Mr Disraeli treated all the offices as at his disposal, and refused to recommend the continuation of Lord Chelmsford in office as Lord Chancellor, and

<sup>1</sup> It would, however, be a simple matter to give him a salary, without office, by providing it in the Schedule to the Appropriation Act.

<sup>2</sup> *Letters of Queen Victoria*, 2nd Series, I, pp. 281-3.

recommended Lord Cairns.<sup>1</sup> (That is why Lord Chelmsford said that the old Government was the Derby and the new the Hoax<sup>2</sup>.) Similarly, on the resignation of Campbell-Bannerman in 1908, Mr Asquith remodelled the Cabinet to suit his own views. Among other changes, he transferred Lord Tweedmouth from the Admiralty to the Presidency of the Council and removed Lord Elgin from the Colonial Office. The latter was first informed of his dismissal by reading in the newspapers of the appointment of his successor.<sup>3</sup> In 1935 Mr Baldwin made some changes, including the dismissal of Lord Sankey from the office of Lord Chancellor and the appointment of Mr Malcolm MacDonald as Secretary of State for the Colonies.

It follows that, though it is usual for the Cabinet to resign, the Prime Minister can, by a personal resignation, force a dissolution of the Government. As Lord John Russell wrote to Lord Melbourne in 1841: "If the Cabinet decide to resign on your proposition they are responsible; but if you say that you are determined to resign, there is no room for deliberating, and I can only announce [to the House of Commons] that as you are determined to tender your resignation, your colleagues, including myself, had of course done the same."<sup>4</sup> In 1846 Peel advised the Cabinet to resign and informed them that, whether they resigned or not, he proposed to do so.<sup>5</sup> Mr Gladstone has quoted this example: "As a rule, the resignation of the First Minister, as if removing the bond of cohesion in the Cabinet, has the effect of dissolving it. A conspicuous instance of this was furnished by Sir Robert Peel in 1846, when the dissolution of the Administration... was understood to be due not so much to a united deliberation and decision as to his initiative."<sup>6</sup> The Cabinet agreed to resign; and there appears to be no reason for Mr Gladstone's characteristic qualification in the words "as a rule".

There is, of course, nothing to compel the King to ask the retiring Prime Minister to form a new Government. But, clearly, an arrange-

<sup>1</sup> *Life of Disraeli*, II, pp. 326-9.

<sup>2</sup> It should be explained to non-British readers that "the Derby" and "the Oaks" are horse-races.

<sup>3</sup> *Life of Lord Oxford and Asquith*, I, p. 198.

<sup>4</sup> *Later Correspondence of Lord John Russell*, I, p. 36.

<sup>5</sup> *Letters of Queen Victoria*, 1st Series, II, pp. 94-5.

<sup>6</sup> *Gleanings*, I, p. 243.

ment between the King and the Prime Minister can compel the dissolution of the Government. This happened, apparently, in 1915, when Mr Asquith asked for his colleagues' resignations in order that he might form a Coalition Government.<sup>1</sup> In 1931, on the other hand, the Cabinet instructed the Prime Minister to tender their resignations.<sup>2</sup> There is only one check upon abuse of this peculiar consequence of the Prime Minister's position. The King must not intervene in party politics. He must not, therefore, support a Prime Minister against his colleagues. Accordingly, it would be unconstitutional for the King to agree with the Prime Minister for the dissolution of the Government in order to allow the Prime Minister to override his colleagues. At the same time, it must be remembered that the royal belief in coalitions is almost a family inheritance, and that proposals for a coalition, especially against extreme Cabinets, are likely to find favour.

When it is said that the appointment of a Prime Minister places all ministerial offices at his disposal, it must not be understood that all offices are immediately vacant. It means only that the King, on the Prime Minister's advice, can exercise his legal right to dismiss the holder of any office held at the pleasure of the Crown. Usually, the retiring Prime Minister takes with him the resignations of his colleagues. But they are not immediately accepted. In 1841 Lord Melbourne advised the Queen: "Your Majesty must, of course, consider us as having tendered our resignations immediately after the vote of last night, and Your Majesty will probably think it right to request us to continue to hold our offices and transact the current business until our successors are appointed."<sup>3</sup> The retiring ministers are dismissed when the new Prime Minister has secured the King's assent to his appointment. The formal method of dismissal depends on the office. The Lords of the Treasury, the First Lord of the Admiralty, the Postmaster-General and the Chancellor of the Duchy of Lancaster are dismissed by the revocation of letters patent. The Lord Chancellor, the Lord Privy

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, pp. 164-6; Beaverbrook, *Politicians and the War*, II, p. 214; Lloyd George, *War Memoirs*, I, pp. 223-35.

<sup>2</sup> Snowden, *Autobiography*, II, pp. 950-2.

<sup>3</sup> *Letters of Queen Victoria*, 1st Series, I, p. 379.

Seal and the Secretaries of State surrender their seals. The offices of Lord President of the Council and First Commissioner of Works are transferred by declaration in Council. No formal act is necessary in other cases.

In 1834 the Duke of Wellington took the offices of First Lord of the Treasury and Secretary of State while Sir Robert Peel was posting home from Rome, and before Peel kissed hands. The Great Seal was placed in commission. But the circumstances of the "dismissal" of Lord Melbourne's Government in that year were peculiar, and ministers normally remain in office until their successors are appointed. The transfer of offices is effected at two Councils on the same day. At the first, the retiring Cabinet ministers surrender their seals; at the second, the seals are delivered to the new Cabinet ministers and other acts done. (The revocation of letters patent and the creation of new commissions are effected by a single instrument.)

(This distinction between the effect of the appointment of a Prime Minister and the actual vacation of office produces the consequence that if the new Prime Minister proposes to make no change in an office, no formal act is necessary in relation to that office.) For instance, when Mr Baldwin succeeded Mr MacDonald in 1935, many of the ministers retained their offices and therefore did not need to be formally reappointed. Mr Lansbury, the leader of the Opposition, challenged this process as unconstitutional. He had, however, misunderstood the situation.<sup>1</sup> As Sir Herbert Samuel said:

Of course, when the Prime Minister changes, the whole Ministry changes, and it is a new Administration. But it is also, I should have thought, a matter of course that any Minister who retains the same office continues in that office.... Each has an understanding with the new Prime Minister, but constitutionally he does not vacate his office.... For example, the Secretary of State for the Dominions, who, under the previous Prime Minister, held the same office, does not, under the new Prime Minister, surrender his seals to the King, and does not receive them again from His Majesty.<sup>2</sup>

Mr Baldwin had had the precedents of 1761 (resignation of the elder Pitt), 1827 (death of Canning), 1865 (death of Palmerston), 1902

<sup>1</sup> 304 H.C. Deb. 5 s., 337-49.

<sup>2</sup> *Ibid.* 349-50.

(resignation of Lord Salisbury), 1908 (resignation of Campbell-Bannerman) and 1923 (resignation of Bonar Law) examined, and found that this was the invariable practice.

What happens in fact is that when a Prime Minister resigns, the King, if he accepts the resignation, immediately sends for someone to carry on the Government. Everyone places his resignation formally in the hands of whoever is to form the Government, so as to give him a free hand to make any changes he may think desirable; but until any one or all of those resignations are accepted the office goes on without any break at all, and no Minister receives a seal afresh or is sworn in those circumstances, unless a change is involved by a resignation having been accepted and someone else taking office.<sup>1</sup>

The only qualification to be made on this statement is that, while it is customary for the ministers, as a matter of courtesy, to offer their resignations, it is not in the least necessary. The Crown can dismiss at pleasure, and for this purpose the Prime Minister advises. Accordingly, the Prime Minister has the offices at his disposal whether or not their holders have offered their resignations.

It follows from this rule that there is a gap between the resignation of a Government and the appointment of its successor. In some cases it may be substantial, as in 1839, 1845, 1851 and 1855. The process of government must necessarily go on, and ministers must take any necessary decisions even though, as ministers, they are about to die. Those decisions can, in many cases, be reversed by their successors.<sup>2</sup> It is, however, not customary for the Cabinet to meet after a resignation except for the determination of questions consequent upon their resignation. The most notable exception occurred in 1839. The Queen and Sir Robert Peel could not agree as to the position of the Ladies of the Bedchamber. Lord Melbourne's Cabinet met again and formally advised the Queen to refuse Peel's demands. Greville said that this action was unconstitutional,<sup>3</sup> and for once Greville was right. The question of the terms on which the new Government accepts or refuses

<sup>1</sup> 304 H.C.Deb. 5 s., 357-8.

<sup>2</sup> Actually, decisions can usually be deferred, except in matters of foreign policy, where the principle of continuity operates.

<sup>3</sup> Greville, *Memoirs*, 2nd Series, I, p. 209.

office is one for the new Government alone. At this time, there was an exaggerated and artificial notion about responsibility. Because the lawyers said that ministerial responsibility was the consequence of the rule that the monarch can do no wrong, it was thought that for every act of the Queen there must be advice. Sir Robert Peel said in 1834, for instance, that by accepting office he would become responsible for the dismissal of the Whig Government.<sup>1</sup> It is now well recognised that in forming a Government the King acts on his own responsibility.<sup>2</sup> Though the retiring Prime Minister or any other person may, on request, give advice before the King has sent for the successor and that successor has accepted, the King acts henceforth on the advice of that Prime Minister and his Cabinet, if any, alone.

<sup>1</sup> Peel, *Memoirs*, II, p. 31.

<sup>2</sup> See pp. 338-40.

## CHAPTER IV

# The Administration

It is a peculiarity of our Constitution that the principles governing the formation and working of the Cabinet and its relations with Parliament can be stated without any reference to the law. The law places no limit on the powers of Parliament. It is not concerned with the Cabinet or the process by which it operates. When, however, the actual work of governing is considered, law and practice intermingle. The absence of a written Constitution in this field provides not a complete absence of legal control, as in other fields, but a far more complex system of legal rules than is common in most systems of government. The Stuart conflict between King and Parliament left no reserve powers to the Government save within the narrow limits of royal prerogative and except that supreme reserve power which is derived from the political control of Parliament. Stacks of statutes have added powers to Government departments. They have, however, provided detailed rules for specific purposes. There is no general power to govern.<sup>1</sup>

The organisation and working of the Administration are thus closely regulated by law. Nor is that law built up on any consistent principles. It has been expanded to meet needs as they arose. It has been modified as the pressure of experience demanded modification. There is not a single legal entity called "the Administration"; there is not a single and comprehensive constitutional provision governing administrative action; there is not a general enabling provision granting administrative power. There is, in law, only a heterogeneous collection of ministers, officers and authorities exercising a mass of apparently unrelated miscellaneous functions. The Administration becomes a whole—in so far as it is a whole—only because of the supreme political control of the

<sup>1</sup> There is no general power to issue regulations to implement the laws passed by Parliament, as there is in France. With us, every such power must be given separately.

Cabinet, having at its command the supreme legislative authority of Parliament, and providing correlation through the constitutional practices that regulate its operation.

It is, indeed, a little difficult to say of what the Administration consists. There is an unnumbered collection of authorities established under the prerogative powers of the King. There are, roughly, eighty authorities created by statute which can reasonably be regarded as central authorities. There is a numerous collection of authorities, elected and otherwise, exercising statutory functions for specific parts of the country. This is a legal classification. It produces the result that there are some thousands of authorities, exercising administrative functions under legal powers delegated by the King or conferred by Parliament, frequently related by legal ties which follow no consistent principle, and frequently being, so far as the law is concerned, unrelated with any other authorities.

Another legal classification would exclude all authorities who derive no revenue from Parliamentary grant, but who have sources of income which, though authorised by Parliament, are not voted annually. The authorities not so excluded have to account to the Treasury, to the Exchequer and Audit Department, and to Parliament. Those authorities which account separately may be regarded as entities since, though they may be subordinated into departments with express legal powers, the existence of a single accounting officer indicates that, in the eyes of the Treasury and of Parliament, they are to be regarded as units. Of these authorities there are seventy-four. The accounts of sixty-eight are presented to Parliament by the Treasury in the Civil Estimates; the accounts of three departments are presented in the Revenue Estimates; and three departments present separate accounts directly to Parliament.

Yet this classification, too, gives a false picture of the administrative machine. That unity which is essential to effective government is provided by the political control of the Cabinet over ministers. There are twenty-four such ministers, of whom eighteen are almost invariably members of the Cabinet. There are, in addition, three ministers at the head of subordinate departments—the Department of Overseas Trade, the Mines Department, and the Paymaster-General's Office—who are



under the general control of other ministers. Also, there is in most departments at least one other minister who acts on the general instructions and is subject to the control of the minister at the head of the department.

It is wrong to assume, however, that there are twenty-four homogeneous entities called the Departments of State. In each there is a central nucleus where decisions are taken by or on behalf of the minister. But in many there are subordinate departments exercising functions prescribed by law in the name of the subordinate department. The minister and his advisers are consulted in matters of political importance or in matters for which the consent of the minister is prescribed by law. For example, the Commissioners of Inland Revenue are subject to the Lords Commissioners of the Treasury; but on many matters they take their own decisions in their own name. Also, there are connected with many of the Departments of State semi-autonomous authorities who consult the minister and his advisers only in respect of those matters where it is so provided by law. Thus, the Racecourse Betting Control Board exercises independent statutory functions but is connected with the Home Office. The Unemployment Assistance Board is similarly connected with the Ministry of Labour; various professional bodies are connected with the Privy Council; the Coal Mines National Industrial Board, the Coal Mines Reorganisation Commission, and the Central Council of Coalowners, are connected with the Board of Trade; the Ministry of Transport has connected with it the Central Electricity Board, the London Passenger Transport Board, the Traffic Commissioners, and other bodies; associated with the Treasury are the Development Commission, the Public Works Loan Board, the Registry of Friendly Societies, the Bank of England; and so on.

The difference is one of degree. Subordinate departments and connected authorities alike have in practice a measure of autonomy. Its extent varies. The Boards of Inland Revenue and of Customs and Excise are so closely controlled by the Treasury that they may be regarded as parts of that department. The Bank of England is so nearly independent that it is usually regarded as a private institution. There are cases on the margin, such as the Board of Control and the General

Register Office, whose relations with the Ministry of Health are at once sufficiently distant and sufficiently close as to give rise to difficulties of classification.

The difference is not merely one of administration; it raises, also, a question of responsibility. A minister cannot be held responsible for a matter which is by law left to the discretion of a statutory authority. The Minister of Labour is not responsible for any individual decision of the Unemployment Assistance Board; nor is the Minister of Health responsible for an act of a local authority unless his consent is necessary. Ministers will, usually, answer questions on any matter in respect of which they can obtain information. But the Minister of Transport, for instance, may refuse to answer a question which relates to an activity of the Central Electricity Board over which he has no control.<sup>1</sup> Similarly, the Minister of Agriculture and Fisheries may refuse to answer questions about the staff or operations of a marketing board. He has no information, and it is not his business to inquire.<sup>2</sup>

The growth of these semi-autonomous bodies is one of the most noticeable recent developments in the administrative machine. They were used in the eighteenth century; but they became fewer and less autonomous as the process of administrative reform developed from 1782 onwards. Though a number of subordinate departments and administrative boards was created during the nineteenth century, among them being the Prison Commission, the Land Registry, the Medical Research Council, the Board of Customs and Excise, and the Committee of Council for Education, few semi-independent authorities were created. The most obvious exception was the Poor Law Commission of 1834, and its brief and stormy career did not suggest that the precedent should be followed. The General Register Office was another exception, but it was engaged in purely technical functions which required no "responsibility". The statutory determination of the powers of the General Medical Council (itself a prerogative body) was important, for it set the precedent for the creation of other semi-autonomous professional authorities with judicial functions. Another significant exception was the Public Works Loans Board; for it set the

<sup>1</sup> 265 H.C.Deb. 5 s., 1449-50.

<sup>2</sup> 299 H.C.Deb. 5 s., 808, 1198.

example of the exercise of a function which was not judicial in the usual sense but demanded a certain freedom from political control.

For the most part the development of the nineteenth century was in the field of local government. In the earlier part of the century the late eighteenth-century practice of setting up local boards for special statutory services was followed, though the boards of guardians were placed under strong central control. When these bodies were superseded, late in the century, by the general local authorities, an element of central control was introduced, and the successor of the Poor Law Commission, the Poor Law Board, was merged into the Local Government Board. Late in the century the Department of Education was separated from the Privy Council and became the Board of Education. With the extension of central powers, the abolition of the school boards in 1902, and the abolition of the boards of guardians in 1930, the local government system was integrated into the general administrative system by reason of the powers of the Ministries of Health, Transport, and Agriculture and Fisheries, the Home Office and the Board of Education. The parallel integration in Scotland has proceeded further owing to the general control of the Scottish Office over the Departments of Health and Agriculture.<sup>1</sup>

The statutory undertakers with monopoly powers for the supply of water, gas, transport and electricity were similarly brought into close relations with the general administrative machine through the development of the powers now vested in the Ministry of Health, the Department of Health for Scotland, the Board of Trade, the Ministry of Transport and the Electricity Commission (under the general control of the Ministry of Transport). The telegraph and telephone system was transferred bodily (subject to one exception in the control of a local authority) to the Post Office; and the railways were not effectively

<sup>1</sup> The recent development of the Scots administrative system is of great interest and would repay a study by a Scots administrative lawyer. The system of central administrative boards was especially familiar in Scotland, but was disapproved by the Royal Commission on the Civil Service (1914), 4th Report, col. 7338, ch. ix, paras. 68, 69, 72. It was therefore abolished in respect of the Board of Health, the Board of Agriculture and the Prison Commission by the Reorganisation of Offices (Scotland) Act, 1928. See Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1395.

related to the general administrative system until powers were given to the Ministry of Transport in 1921.

The return to the semi-autonomous body is, however, a very recent tendency. It has proceeded furthest through the development of the control of passenger and goods transport by the Ministry of Transport and of the control of agriculture by the Ministry of Agriculture and Fisheries and the Department of Agriculture for Scotland. There are, however, bodies similarly semi-independent but in close relations with other departments. Among them are the Board of Control and the General Board of Control for Scotland, the Racecourse Betting Control Board, the trade boards, the industrial courts, the Unemployment Assistance Board, the British Broadcasting Corporation, the various professional bodies connected with the Privy Council, the Ministry of Health, and the Department of Health for Scotland, the various bodies dealing with mining and related to the Board of Trade, the Development Commission and the University Grants Committee.

Speaking generally, there are four kinds of motives for creating these semi-autonomous authorities. The British Broadcasting Corporation and the Unemployment Assistance Board were created because it was considered that the services which they provide ought to be administered free from political control, except so far as powers of control were given to the Post Office and the Ministry of Labour respectively. The marketing boards, the bodies concerned with coal-mining, the Herring Industry Board, the Flour Millers' Corporation, and similar bodies, were created in order to enable the producers to control the marketing of their products with the minimum of State interference. The various professional bodies were given control over the entry to and discipline of their professions with slight political supervision. The Crown Lands Commissioners, the Forestry Commission, the Development Boards for secondary industries, the Central Electricity Board, and similar bodies, were created to administer technical services which involve little political control. Finally, many quasi-judicial authorities have been set up to deal with wages, the licensing of transport undertakings, the determination of unemployment insurance benefit,

unemployment assistance, war pensions, liability to national and local taxation, and so on.

Another development, noticeable especially since the Report of the Machinery of Government Committee in 1918, is the creation of numerous advisory committees. In many cases statute law has specially authorised or compelled the setting up of such committees. The most important are the Import Duties Advisory Committee of the Treasury, the Consultative Committees of the Board of Education and the Department of Education for Scotland, and the Unemployment Insurance Statutory Committee of the Ministry of Labour. But the Ministry of Agriculture and Fisheries, the Ministry of Health, the Ministry of Pensions, the Scottish Departments, the Board of Trade, and the Ministry of Transport, make great use of statutory advisory committees. The Home Office, too, is advised by the Poisons Board, and the prerogative departments have advisory committees for which statutory authority is not required.

The complex administrative organisation which results may be illustrated by an examination of the departments and authorities connected with the Ministries of Agriculture and Fisheries and of Transport. Each is under the control of a minister responsible to Parliament. In each there is an administrative nucleus around which are clustered semi-autonomous central authorities, advisory committees, local authorities and (in respect of the Ministry of Transport) statutory undertakers. Each minister is, legally, a corporation sole in which property is vested in trust for the Crown.

The Ministry of Agriculture and Fisheries Act, 1919, provides for the setting up of a Council of Agriculture for England, a Council of Agriculture for Wales and an Agriculture Advisory Committee for England and Wales. The two Councils for England and for Wales may, by agreement, act together as one Council. They are directed to meet in public at least twice a year for the purpose of discussing matters of public interest relating to agriculture or other rural industries. The Agricultural Advisory Committee is established to advise the Minister on all matters and questions submitted to it in relation to the exercise by the Minister of any powers or duties which do not relate to the fishing

industry; and it is empowered to make recommendations to the Minister on other matters affecting agriculture or other rural industries. The Minister, or, in his absence, the Parliamentary Secretary, may attend this Committee and act as chairman, but may not vote.

Each county council (other than the London County Council) must have, and the London County Council and each county borough council may have, an agricultural committee constituted in accordance with a scheme made by the council and approved by the Minister. In practice, the Minister nominates some members and the other members are chosen by the council. Matters relating to agriculture (other than agricultural education) stand referred to this committee and, generally speaking, the council must act after a report from the committee. It should be added that the Minister has substantial powers of control in respect of the agricultural administration of the local authority, and that the agricultural committees are represented on the appropriate Council for Agriculture and on the Agricultural Advisory Committee.

The Minister has power, under the Agricultural Land (Utilisation) Act, 1931, to set up another advisory committee to advise him in making grants for assisting in the provision of seeds, fertilisers and equipment for unemployed persons for whom allotments are provided; but it appears that no such committee has been set up.

Under the Agricultural Credits Act, 1923, as amended, the Minister has power to promote the formation or extension of agricultural credit societies and to make advances to them. Under the Agricultural Credits Act, 1928, he has power to make long term credits to a mortgage loan company in order that the company may make advances to borrowers.

Under the Agricultural Marketing Acts, 1931 and 1933, a complex system has been set up. Producers in an industry may produce a marketing scheme with the consent of the Minister setting up a marketing board for the industry. The scheme may empower the Board to buy the regulated product, to produce specified commodities from the product, to sell, grade, pack, store, insure, advertise and transport the regulated product, to order producers to sell the regulated product, to buy things needed for the production, to regulate sales by fixing prices,

etc. The Minister may make loans to a board, and Agricultural Marketing Facilities Committees will advise him as to the making and renewal of such loans. The Minister is directed to set up Consumers' Committees and Committees of Investigation. The former make reports on the effect of schemes on consumers and on complaints; the latter consider reports from the former and complaints which could not be considered by the former. The Minister may, further, set up Agricultural Marketing Reorganisation Commissions to prepare marketing schemes and schemes for developing secondary industries and to consider marketing problems. The marketing boards may themselves produce schemes for developing secondary industries and, if such a scheme is approved by the Minister, a development board (including persons appointed by the Minister) may be set up with large powers. The Board of Trade (after consultation with the Minister) may regulate imports, and the Minister may regulate internal production. A Market Supply Committee reviews marketing conditions.

Under the Agricultural Wages (Regulation) Act, 1924, an agricultural wages committee is set up for each county and an Agricultural Wages Board for England and Wales. The members of a committee are either nominated or elected to represent employers and workers, except for two, who are impartial persons nominated by the Minister. The committees fix the minimum rates of wages for their counties. They send notification of such a decision to the Agricultural Wages Board, whose members are appointed by the Minister. The Board then makes such order as may be necessary for the purpose of carrying out the committee's decision. The Minister has powers, however, to direct a committee to consider a minimum rate, and he has in addition substantial powers of making regulations.

The Minister also has powers in respect of land drainage, and for this purpose his department is associated with the catchment boards and drainage boards under the Land Drainage Act, 1930. He is authorised to set up catchment boards, to make and alter drainage districts, and to make grants to catchment boards; and he has besides other powers of control. But for the most part the boards draw their revenues locally and are autonomous local authorities of a special kind.

Other kinds of local authority over which he has powers of control are the local fisheries committees established under the Sea Fisheries Regulation Act, 1888, and the fishery boards established (now) in accordance with the Salmon and Freshwater Fisheries Act, 1923. The Sea Fish Commission established in 1933 is an advisory body, and so is the Advisory Committee on Fertilisers and Feeding Stuffs.

Kew Gardens are under the Minister's control. He is, also, a member of the Crown Lands Commission, though the major responsibility for this body is vested in the Treasury. The Ordnance Survey is carried out under his direction. He nominates additional members to the Railway Rates Tribunal, but that body is more closely associated with the Ministry of Transport, the Board of Trade and the Lord Chancellor.

The Wheat Commission and the Flour Millers' Corporation were set up by the Minister under the Wheat Act, 1932. The Act authorises the Commission to pay to farmers the difference between "the ascertained average price" as prescribed by the Minister and a standard price which may be altered by the Minister on the recommendation of a committee. The Fund available for paying the difference is under the control of the Wheat Commission, and the main revenue is met out of quota payments by millers and importers. The Commission can recommend that some of the stock of wheat should be bought by the Flour Millers' Corporation, and the Minister may then make an order for the purpose. Differences between the Minister and the Corporation are settled by arbitration.

An administrative system almost equally complicated is connected with or controlled by the Ministry of Transport. The Minister is advised by a London and Home Counties Traffic Committee, a Rates Advisory Committee, a Roads Advisory Committee, a Tramways Advisory Committee, a Transport Advisory Committee and an advisory panel of experts appointed by him from nominees of undertakings, labour, trade and local authorities, for railway purposes. He is in control of the Electricity Commissioners, who have powers of control over electricity undertakers and who are advised by an Electricity Advisory Committee. The Electricity Commissioners exercise most of the powers of control over electricity supply, but the Minister retains other powers. Also, while electricity is for the most part supplied



by joint electricity authorities and other authorised undertakers, a semi-autonomous body, the Central Electricity Board, supplies electricity to other authorised undertakers and to railways by means of a national transmission system.

As successor to the Road Board, the Minister has the Road Fund under his control; and since all major works are partly financed by grants from this Fund, the Minister has close relations with the highway authorities. He is, also, closely connected with dock and harbour authorities and railway companies—the latter being, certainly since 1921, public utility undertakings of a special kind. The Traffic Commissioners who exercise the quasi-judicial function of granting licences for public service passenger transport vehicles and the licensing authorities who grant licences for goods transport by road act under his general directions. The London Passenger Transport Board which provides passenger transport for a wide area in and around London is connected with the Ministry but is largely autonomous. A Standing Joint Committee for London Transport correlates the activities of the Board and of the main line railway companies engaged in suburban passenger transport.

These two examples are exceptional in that they exhibit a somewhat greater complication than exists in connection with most departments. They show, however, that the administrative system has become far more complicated than is commonly recognised. The simple dichotomy of central departments responsible to Parliament through ministers and local authorities responsible to a local electorate no longer exists. The twenty-four ministers are not leaders of columns which march behind them in regular ranks, for the columns now have outriders on their flanks and a relatively unorganised mass of camp followers trailing behind.<sup>1</sup>

Equally false is it to assume that for every act that is done by a public authority some one is responsible to Parliament. The deliberate intention in setting up such bodies as the Unemployment Assistance Board, the London Passenger Transport Board, the Central Electricity Board and the British Broadcasting Corporation was to exclude

<sup>1</sup> For a survey, see Appendix III.

Parliamentary criticism of administrative details. This does not prevent general Parliamentary discussion. Since Parliament is omnipotent it can, by legislation, override any authority or person. Accordingly, members can propose legislation or they can advocate that legislation be enacted in any debate where such advocacy is in order. They can, for instance, complain in the debate on the Address that the Government does not propose to deal with the particular question on which there is a grievance; or they can raise the question on an adjournment motion<sup>1</sup> or on a vote of censure. They cannot, however, discuss it on Estimates unless there are Estimates. If the authority have a source of revenue apart from Supply, such as local rates or special licence duties or fees, the question does not arise. On a motion to reduce a Minister's salary he can be criticised only in respect of the exercise or non-exercise of such powers of control as he possesses.

If, however, Estimates are presented, administrative questions can be raised even though the Minister has no responsibility. For instance, after the creation of the Unemployment Assistance Board under the Unemployment Assistance Act, 1934, a Supplementary Estimate became necessary because the administrative expenses of the Board and appeal tribunals were on the Ministry of Labour Vote and it was necessary, in addition, to vote money to the Unemployment Assistance Fund. It was not possible to criticise the Unemployment Assistance Act or to suggest that it ought to be amended.<sup>2</sup> It was, however, possible to criticise the Board's administration even though the Minister had no responsibility for it. Examples were cited which impressed the Minister. He had no power to order a change but, in his own words, "As a consequence of that Debate, I represented to the Chairman of the Board opinions and detailed cases which had been conveyed to me both during discussion by Members of the House and subsequently by other Members and outside bodies."<sup>3</sup> The Board decided to ask the Minister to recommend to Parliament to suspend the Regulations (previously approved by Parliament) under which the

<sup>1</sup> See an adjournment discussion on a broadcast talk delivered by the present writer: 293 H.C.Deb. 5 s., 2102-12.

<sup>2</sup> 297 H.C.Deb. 5 s., 50, 79, 197.

<sup>3</sup> 297 H.C.Deb. 5 s., 968.

Board's officers were acting. The Minister made no apology for making the representation. Parliament possessed certain methods of control and the House had made evident its opinions of the Regulations.<sup>1</sup>

The Board is in part under Parliamentary control because: (1) its Regulations have to be approved by both Houses, though they cannot be amended except on the suggestion of the Board; (2) Estimates are necessary annually; (3) the Minister has certain limited powers of control for which he is necessarily responsible; and (4) Parliament has always the ultimate power of legislation. Consequently, the limitations on Parliamentary control are slight, and are irritating rather than effective. The chief result of "taking unemployment assistance out of politics" is that the Board has no means of defending itself against attacks. This does not apply, however, to all semi-autonomous authorities, since only the third and fourth methods of control are usually available.

Outside these twenty-four departments and their satellites, there are certain public departments which are not represented in Parliament by responsible ministers. Each House has its own administrative organisation which is controlled, as to the House of Lords Offices, by a Select Committee, and as to the House of Commons Offices, by a Statutory Committee under the chairmanship of the Speaker. The Charity Commission is represented in the House of Commons by a Parliamentary Commissioner who is appointed by the Crown on the advice of the Prime Minister, who answers questions, but who is not a minister. The Commission has its own vote and its own accounting officer. It is, therefore, subject to Treasury control. The Ecclesiastical and Church Estates Commission is represented in Parliament by the Second Commissioner, who answers questions and is similarly appointed; but here there are no estimates. Indeed, the Church of England as a whole may be regarded from one point of view as a public service which has its representation through the Lords Spiritual, and which has in the Church Assembly its own legislative organ whose measures need Parliamentary approval by resolution. The Forestry Commission is similarly represented by a non-ministerial member.

<sup>1</sup> 297 H.C.Deb. 5 s., 970.

Of those public offices which are not represented in Parliament, the most important is the Exchequer and Audit Department. Its head is the Comptroller and Auditor-General who audits the appropriation and other accounts and sanctions the withdrawal of funds from the Consolidated Fund. He is "independent of any political control save that he must obtain Treasury sanction for the number and remuneration of his staff and that he must observe as regards certain special types of account any regulations laid down by the Treasury".<sup>1</sup> The Royal Household, the Offices of the Duchy of Cornwall and the County Palatine of Durham,<sup>2</sup> the Lord Great Chamberlain's Department, the Heralds' College, the Court of the Lord Lyon, and the Irish Heralds' Office, are similarly independent. The powers of the Lord Chancellor over the Royal Courts of Justice are so limited that these Courts, too, may be regarded as independent; and with them must be associated the Patents Appeal Tribunal, the Land Values Reference Committee, the Coal Mines (Reference) Committee, and the Road and Rail Traffic Appeal Tribunal. The Scottish Law Courts, the Rules Council for Scotland, the Sheriff Court Rules Council for Scotland, and the General Council of Solicitors in Scotland, are even more nearly independent. Queen Anne's Bounty, the Scottish Ecclesiastical Commission and the Rabbinical Commission for the licensing of Shechotim (Jewish slaughterers) operate without ministerial control. The General and Special Commissioners for Income Tax are associated with the Board of Inland Revenue but are uncontrolled except by the Law Courts. The Railway Assessment Authority, the Anglo-Scottish Railway Assessment Authority and the Railway and Canal Commission are similarly associated with departments, but are controlled only by the Courts. Trinity House, the Pharmaceutical Society, the Law Society, and some other professional bodies, exercise statutory functions in association with departments. The Royal Fine Arts Commission and the Royal Fine Arts Commission for Scotland are advisory bodies only.

None of these, except the Exchequer and Audit Department, is part

<sup>1</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1191.

<sup>2</sup> The Duchy of Lancaster is represented by a minister, but his salary is not voted, so that his conduct cannot be challenged in the usual way: 304 H.C. Deb. 5 s., 363.

of the normal administrative system. They are, so to speak, administrative "outposts". Some of them exhibit that distinction which is sought to be drawn (with necessarily increasing difficulty) between administrative and judicial authorities. For, even if a theoretical distinction can be drawn, every court necessarily possesses an administrative machine, and experience has shown that that machine needs control by the general administrative authorities if it is not to become inefficient and even, possibly, corrupt.<sup>1</sup> What is clear, in any case, is that the commonly accepted statement that a minister is responsible for every administrative act must be taken subject to numerous and important qualifications.

<sup>1</sup> Royal Commission on the Civil Service (1914), Sixth Report, Minutes of Evidence, pp. 71-2; Epitome of the Reports from the Select Committee of Public Accounts (1926), pp. 315-16.

## CHAPTER V

### Ministers at Work

#### § 1. *The Qualifications of a Minister.*

The most elementary qualification demanded of a minister is honesty and incorruptibility. It is, however, necessary not only that he should possess this qualification but also that he should appear to possess it. Though Lord Palmerston laid down the obvious rule that ministers must not accept presents,<sup>1</sup> he did not object to ministers holding directorships. He saw "no objection to a member of the Government retaining other employment, provided that employment can be carried on without prejudice to the Queen's service, which has the paramount claim".<sup>2</sup> Consequently, Mr Childers remained Director of the London and County Bank while he was Civil Lord of the Admiralty, but resigned when he was appointed Financial Secretary to the Treasury.<sup>3</sup> The law officers were similarly allowed to engage in private practice until the briefing of the Attorney-General for *The Times* in the Parnell Enquiry led the subsequent Liberal Government to alter the rule.<sup>4</sup> The Cabinet at the same meeting "considered the practice, which has prevailed from time to time, of the holding of directorships and the like, more or less lucrative, by gentlemen having the honour to serve Your Majesty in political office. The Cabinet were of the opinion that such appointments ought to stand suspended, both as to emolument and attendance, during the tenure of office; but they postponed until some *early* day the consideration of the exact terms in which such a resolution ought to be embodied".<sup>5</sup>

In 1906 the Government laid down the rule that "all directorships held by ministers must be resigned except in the case of honorary directorships in connection with philanthropic undertakings, and

<sup>1</sup> Ashley, *Life of Lord Palmerston*, I, p. 130.

<sup>2</sup> *Life of Childers*, I, pp. 120-21.

<sup>4</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 171.

<sup>3</sup> *Ibid.*

<sup>5</sup> *Ibid.*

directorships in private companies".<sup>1</sup> Sir Henry Campbell-Bannerman later defined a "private company" as one in which "the interest of the minister, if a director, is substantially the same as the interest of a partner in a business firm".<sup>2</sup> Mr Swift MacNeill (without authority from the Government) explained that the object was to "secure the Government Bench from the danger of becoming a sty for guinea pigs".<sup>3</sup> In 1924 the Labour Government applied the rule to trade union officials.<sup>4</sup> Mr Baldwin stated in 1926 that the rule laid down in 1906 had become the practice, and added: "It has always been the practice, so far as I know, in all Cabinets with which I have had acquaintance, and I believe in Cabinets before I had the honour of serving, that whenever the question of private interest comes in the Minister always makes a declaration to that effect, and sometimes does not take part in the discussion, or, if he does, it is with the full knowledge of all his colleagues."<sup>5</sup> No alteration was made in the rule, though it was stated during the course of the debate that the then Minister of Health held large blocks of shares in two companies which had numerous Government contracts.<sup>6</sup> The rule was temporarily relaxed in the first National Government of 1931, since it was a stop-gap Government which would be reconstructed at the general election. The ministers retained their directorships but did not take fees.<sup>7</sup> Otherwise, the rule has been followed by all Governments since 1906 and is still in force.<sup>8</sup>

The question of share-holding was raised in the Marconi debate of 1913.<sup>9</sup> Mr Asquith then laid down the following propositions:

The first...and the most obvious is that (ministers ought not to enter into any transaction whereby their private pecuniary interest might, even conceivably, come into conflict with their public duty). . . Again, no minister is justified under any circumstances in using official information, information that has come to him as a minister, for his own private profit or for that of his friends. Further, no minister ought to allow or to put himself into a position to be tempted to use his official

<sup>1</sup> *Parl. Deb.* 4th Series, vol. 154, col. 234.

<sup>2</sup> *Ibid.* col. 640.

<sup>3</sup> *Parl. Deb.* 4th Series, vol. 155, col. 186.

<sup>4</sup> 169 H.C.Deb. 5 s., 735.

<sup>5</sup> 198 H.C.Deb. 5 s., 93.

<sup>6</sup> See the debate, *ibid.* 85-159. The minister was Mr Neville Chamberlain, now (1936) Chancellor of the Exchequer.

<sup>7</sup> 256 H.C.Deb. 5 s.

<sup>8</sup> 307 H.C.Deb. 5 s., 727 (1935).

<sup>9</sup> 54 H.C.Deb. 5 s., 391-514, 543-664.

influence in support of any scheme or in furtherance of any contract in regard to which he has an undisclosed private interest. . . Again, no minister ought to accept from persons who are in negotiation with or seeking to enter into contractual or proprietary or pecuniary relations with the State any kind of favour. . . I will add a further proposition, which I am not sure has been completely formulated, though it has no doubt been adumbrated in the course of these Debates, and that is that ministers should scrupulously avoid speculative investments in securities as to which, from their special means of early or confidential information, they have or may have an advantage over other people in anticipating market changes.<sup>1</sup>

These he stated as "rules of obligation". He added that there were certain "rules of prudence" which had never been formulated and which could hardly be put in precise or universal terms. "One of those rules is that in these matters such persons should carefully avoid all transactions which can give colour or countenance to the belief that they are doing anything which the rules of obligation forbid."<sup>2</sup>

A slightly different question has been raised where ministers have contributed to the press during their tenure of office. The first question which naturally arises is whether such contributions, like other public announcements of a minister, may be regarded as explanations on behalf of the Government. The Labour Government of 1924 said that the Government accepted responsibility in the same way and to the same extent as was customary in regard to statements of policy made in other forms.<sup>3</sup> It was, however, a little difficult to apply this rule to the monthly articles written by the first Lord Birkenhead, then Secretary of State for India, on all kinds of questions, other than those connected with India. The Conservative Government in 1925 therefore decided to re-affirm the principle that ministers of the Crown, while holding office, should refrain from writing articles for publication in any way connected with matters of public policy".<sup>4</sup> Lord Birkenhead agreed to write no more articles as soon as his current contract had expired.<sup>5</sup>

<sup>1</sup> 54 H.C.Deb. 5 s., 556-7.

<sup>2</sup> *Ibid.* 557-8. In 1935 Mr J. H. Thomas, a member of the Cabinet, took out a policy whereby the insurers agreed to pay a total loss in the event of a general election before the end of the year: *The Times*, 19 May, 1936. He resigned soon after the disclosure of this and other information.

<sup>3</sup> 173 H.C.Deb. 5 s., 225.

<sup>4</sup> 184 H.C.Deb. 5 s., 1735-6.

<sup>5</sup> 185 H.C.Deb. 5 s., 791.



This rule was reconsidered in 1927. Mr Baldwin then announced:

The rules which His Majesty's present advisers have adopted preclude the practice by ministers of journalism in any form; but this inhibition does not extend, and has never extended, to authorship or to writings of a literary, historical, scientific, philosophical or romantic character, for which there exist numerous and respectable precedents. Information of a confidential character should be never used improperly by any person; and in particular those who have held high office under the Crown are, in my opinion, under an obligation to consult the Government of the day or the heads of Departments affected upon the publication of any confidential matters of which they have acquired official knowledge which may affect the public interest; and to obtain in any doubtful case formal permission.<sup>1</sup>

Mr Baldwin considered that this rule did not apply to Mr Winston Churchill's books on *The World Crisis*: "There was a question whether the work should be finished or not, and I considered it right that the work should be finished." The prohibition is "a prohibition against writing articles in the Press".<sup>2</sup> Mr Baldwin also ruled that articles contributed to the press by Lord Birkenhead, which were intended to be published in book form, and were merely given prior publication in the press, were not within the principle.<sup>3</sup> Mr Ramsay MacDonald, further, held that it did not apply to defences by ministers of their own policy in *The News Letter*, the organ of his Parliamentary group, for which no payment was made, on the ground that it was not "professional journalism" and that the publication was "the organ of an important party in the State".<sup>4</sup> The general rule was, however, affirmed by the second National Government.<sup>5</sup>

The more important question which arises in the case of ministers relates not to the bias which they might possibly possess through private interest or external influence but to their competence for their posts. The minister at the head of the department is responsible, subject

<sup>1</sup> 203 H.C.Deb. 5 s., 559.

<sup>2</sup> *Ibid.* 839-40.

<sup>3</sup> 216 H.C.Deb. 5 s., 355-8. In 1936 Mr Baldwin held that extracts from *Haig*, by the Secretary of State for War, which were given advance publication in a newspaper, were not within the prohibition: 308 H.C.Deb. 5 s., 1955.

<sup>4</sup> 274 H.C.Deb. 5 s., 352-3.

<sup>5</sup> 265 H.C.Deb. 5 s., 1279; 274 H.C.Deb. 5 s., 353.

to the Cabinet and to Parliament, for that department. He takes all the decisions of principle or refers them for decision by the Cabinet. It is true that, technically, certain departments are governed by Boards. The offices of Lord High Treasurer and Lord High Admiral are permanently in commission and "Lords Commissioners" are appointed by letters patent to govern the Treasury and the Admiralty respectively. But, by statute, two Lords of the Treasury are enabled to act on behalf of the Board.<sup>1</sup> The First Lord and the Junior Lords take no part in the work of the Treasury and the "Board" never meets. Decisions are in fact taken by the Prime Minister or by the Chancellor of the Exchequer; Treasury orders are signed by two Junior Lords who have no idea what they are signing; and, although Treasury minutes state that "My Lords [or the Lords Commissioners] have taken into consideration...and have decided that...", in fact the Chancellor decides. The Board of Admiralty, on the other hand, meets and takes decisions. It consists of the First Lord, the four Sea Lords, the Deputy Chief of Staff, the Parliamentary and Financial Secretary, and the Civil Lord, with the Permanent Secretary. But the First Lord has always taken responsibility, and this is laid down by the Order in Council of 1929 under which the Board now operates. "In an administrative sense [the Board] means either the First Lord, acting after consultation with the whole Board, or the appropriate member or members of the Board acting with the expressed or implied approval of the First Lord."<sup>2</sup>

The Board of Trade is so called because it was originally a committee of the Privy Council. It contains a number of eminent *ex officio* members in accordance with an Order in Council of 1786. But it never meets; and in 1930 the then President was "unable to say when the Board, in its corporate capacity, last met".<sup>3</sup> It is invariably provided by statute that the President or the Parliamentary Secretary shall act on behalf of the Board. The Board of Education is still more anomalous, for it was created in 1899 to supersede the Committee of the Privy Council for Education. It is of this body that the story is told that, when asked why it was to be a Board, the Duke of Devonshire replied that that point had been fully considered, though for the life of him he could not

<sup>1</sup> Since 1936 it is not always necessary to have the signatures of two Lords.

<sup>2</sup> 238 H.C.Deb. 5 s., 1860.

<sup>3</sup> 238 H.C.Deb. 5 s., 13.

remember why the decision was taken, but that he could assure their Lordships that there were good reasons for it. There is in fact no record of any meeting of the Board; and the President acts by statute.

✓ The result is that a lay minister, a "transient bird of passage", takes decisions on important questions of policy, subject to Cabinet control, upon which experts may be divided. If he has had experience as an official it is by the accident of his career and it will have been, almost certainly, in a very subordinate capacity. Thus, Mr Sidney Webb, who had been a second division clerk in the Colonial Office, became in course of time Secretary of State for the Colonies. Sir Bolton Eyres-Monsell, who had been a comparatively junior naval officer, became First Lord of the Admiralty. Such experience is likely to be a handicap rather than a benefit. It is somewhat difficult to imagine a former lieutenant-commander politely telling a First Sea Lord that he is talking nonsense. Nor does it necessarily follow that a politician is given the post that best suits his character and capacity. } "Sir Robert [Peel] appointed the man of the world Financial Secretary of the Treasury, locked him in a room or sealed him to a bench; and entrusted to a student, under the usual title of Patronage Secretary of the Treasury, the management of the House of Commons, a position which requires consummate knowledge of human nature, the most amiable flexibility, and complete self-control."<sup>1</sup> Allowing for Disraeli's usual exaggeration, it is nevertheless true that prominent party leaders have "claims" which cannot easily be overridden and that frequently the only kind of removal possible is one that involves "promotion"—as Sir Stafford Northcote was promoted in 1885 and Sir John Simon and Lord Londonderry in 1935. >

✓ Ministers usually have, nevertheless, substantial Parliamentary experience. } It is, of course, possible to be a member of Parliament for many years without learning anything or showing any capacity. The holders of "safe" seats are especially prone to lassitude, partly because they need not exert themselves to retain their seats, partly because the safest seats are frequently open only to wealthy men or to the nominees of trade unions, as the case may be. Nor is much done to give the

<sup>1</sup> Disraeli, *Lord George Bentinck*, p. 227.

back-bench member an interest in specific problems or experience in handling them. Nevertheless, it may be assumed that a member of Parliament who sufficiently distinguishes himself in debate or in the more important details of committee work is at least of rather more than average capacity. The days have gone by when a young man "who had been six years in Parliament, had only spoken twice in debates of importance, and had been by no means assiduous in his attendance"<sup>1</sup> could be given an important office because he was the son of the then Duke of Devonshire. At the same time, party exigencies or personal considerations may occasionally bring into the Cabinet a person who has in no way distinguished himself from the ordinary rank of members.

Usually, also, a minister at the head of a department has had experience as parliamentary private secretary and in a subordinate office. Mr Gladstone asserted that Sir Robert Peel has laid down the rule that no person should be put into the Cabinet without previous ministerial experience. Neither Mr Gladstone nor Sir Robert Peel invariably followed such a rule; nor is it always possible for it to be followed. Mr Ramsay MacDonald in 1924 had no more than a handful of experienced ministers at his disposal. Nevertheless, there is a fairly normal progression from unpaid office as parliamentary private secretary to a minor office and from a minor office to the headship of a great office of State. Ministerial experience is itself valuable, not so much for the information it gives as for the capacity to handle delicate and complicated issues that it inculcates. Moreover, the House of Commons is no mean judge of capacity; and a member who is successful as a junior minister, especially if his superior is in the House of Lords or is capable of delegation, may be expected to succeed at the head of a department.

The rule which Mr Gladstone ascribed to Sir Robert Peel, though frequently it cannot be followed, is nevertheless of substantial importance. The amount of work carried out by a Government department is enormous. Every decision is taken in the name of the minister, even where it is in fact taken by a civil servant of no higher rank than that of Assistant Secretary. Each department receives a large number of communications, many of which cannot be referred to the minister. Files

<sup>1</sup> *Life of the Duke of Devonshire*, I, p. 56.

are constantly circulating which are never laid before the minister. The selection of material must be undertaken by subordinates. The minister must therefore trust his advisers that matters of real importance are in fact brought to his attention. Even so, the material placed before him is enormous. If the Secretary of State for Foreign Affairs has to take a decision in respect of Liberia, he cannot read every word of the documentation. He must be able to leave to his advisers the selection and summarisation of the records available. Indeed he must, if he is to decide the question of Liberia as one of the many questions submitted to him during the course of his day's work, himself direct his private secretary to summarise the material if it has not already been done. For there is not merely a technique of delegation, but also a technique of decision. This technique does not come naturally. It is acquired by experience. The methods of administration have to be learned. Experience as a parliamentary private secretary and as a junior minister is invaluable for this purpose. It enables a politician to learn the process of government. It is said that one of the difficulties of the Labour Governments was that their members were suddenly thrust into responsible positions without this experience. They were naturally not disposed to rely too much on the experience of the civil service. They suspected—and, perhaps, they had reason to suspect—that a sudden change of outlook would not immediately be reflected in the minds of the civil servants. They were, too, inexperienced in the use of private secretaries. One of them, according to the gossip of the civil service, treated his private secretaries as messenger boys. Some of them never learned that delegation was the art of government and therefore tried to do too much and to master too many documents. This must not be taken to be a criticism; for the difficulty arose through a high sense of responsibility combined with inexperience. Moreover, certain of the Labour ministers, notably Mr Philip Snowden, occupy a high place in that class list which civil servants draw up in assessing the competence of their respective ministers.

There is, too, another difficulty for the inexperienced. Decisions are taken on the basis of memoranda. The ability to seize the gist of a long statement by a single reading is acquired only by experience. The un-

trained minister may be compelled to read and re-read before he feels that he has mastered the problem that is put before him. Some ministers never acquire the art of rapid digestion. Few acquire it without previous experience. The parliamentary private secretary and the junior minister acquire the practice without having the responsibility for decision. Sir Robert Peel and Mr Gladstone were correct in their inference, though their conclusion is not always practicable in our political system.

Nor is the progression of a minister from office to office always a disadvantage. Rapid changes are deprecated because it takes some time for a minister to grasp the implications of the questions submitted to him. But there is little harm and some good in transfers at intervals. The minister is not an expert, nor can he ever hope to compete with his advisers on their own subjects. His task is rather to bring an independent mind to the questions put before him, to be convinced by his experts that they are right, or to settle in the light of common-sense the disputes between the experts. The wider his vision, the easier it becomes to grasp the implications. The dangerous minister is he who fails to see consequences, not merely in relation to his own department, but in relation to the process of government as a whole, and especially in relation to its import on the House of Commons and upon public opinion. "The value of the political heads of departments", said Sir William Harcourt, "is to tell the permanent officials what the public will not stand."

It follows that a narrow departmental experience is a disadvantage, and that, within limits, variety of office is desirable. That result is obtained whenever a party has been able to serve a substantial period, or a number of periods, of office. Sir Robert Morant is believed to have said that the differences in the salaries of Cabinet offices make for rapid transition of ministers. In fact, however, these differences have small effect. A minister is usually concerned primarily with his reputation. He cannot make a personal reputation unless he has time to take effective control of his department. There are, of course, certain offices, especially the Ministry of Labour and the Board of Trade, where it is difficult to

<sup>1</sup> *Life of Sir William Harcourt*, II, p. 587.

make any reputation except a bad one. But even in such offices, as Sir Kingsley Wood showed at the Post Office, an energetic and imaginative minister can (by fighting his permanent officials if necessary) add to his parliamentary authority. An ambitious minister will prefer to stay long enough to do this, rather than to accept the kind of "promotion" which is an admission of defeat.

The real reason for having ministers at the heads of departments is, however, that this is an effective method of bringing government under public control. As Sir William Harcourt said with conscious exaggeration, if the country were governed by permanent officials it would be extremely well governed for twelve or eighteen months, and then the public would hang all the heads of the civil service to the nearest lamp-posts.<sup>1</sup> It was no doubt this idea, and not merely a suspicion of military experts, which impelled a French Prime Minister to say that war was too serious a matter to be carried on by generals and admirals. The same idea, expressed with more decorum and a greater sense of responsibility, was behind the recommendation of the Hartington Commission in 1890, that the office of Commander-in-Chief should be placed under a Secretary of State. "Under our Constitution, it is impossible to place any direct control over the army, over army organisation, in the hands of any man except one who shall be directly responsible to the House of Commons."<sup>2</sup>

This system has the disadvantage that the downfall of a Government may replace an able minister by a less able, and that the able minister has to try to convert himself into an opposition leader whose main function is to "swear horrible".

One result of a great electoral reverse is to invert the functions of most members of Parliament, and in particular of the two Front Benches... [In 1880] the interchange of functions consequent on the change of Government was disastrous to the Conservative Party. Sir Stafford Northcote, Sir Richard Cross, Mr. W. H. Smith, were excellent heads of great departments and able Cabinet ministers. But when the Cabinet ceased to exist, and the great departments fell to their opponents, they were transferred, through no fault of their own, from duties

<sup>1</sup> *Life of Sir William Harcourt*, II, p. 587.

<sup>2</sup> *Life of the Duke of Devonshire*, II, p. 219.

which they performed with credit, to duties which they could not perform at all.<sup>1</sup>

These eminent men might have retorted that a detached member of the "Fourth Party" was in no position to judge impartially the leadership of the Conservative Party; and Liberals might have suggested that the chief effects were to supersede an unscrupulous adventurer by "the Grand Old Man" and to substitute for a set of amiable old gentlemen, who were incapable of restraining the adventures of their leader, a team of virile and energetic statesmen with minds of their own. The debate, indeed, continues; for this is the party system, and the judgments of one side are not accepted by the other.

### § 2. *Ministers and Civil Servants.*

The check upon incompetence arises not merely from the reaction of parliamentary and public opinion, but also from the competence of the civil service. The minister has at hand the best opinion available. A First Lord of the Admiralty will hesitate to overrule a unanimous judgment of the rest of the Board of Admiralty; and the Secretaries of State for War, Air and India must similarly approach with deference the united opinion of their Councils. They are certainly not always united or unanimous. The greatest capacity which experts possess is to differ among themselves. "It is the common belief that when naval or military questions arise, a Prime Minister has nothing to do but deliver himself into the hands of experts who will decide for him, but much more often he finds himself called upon to decide between rival experts advancing contradictory propositions on equal authority."<sup>2</sup>

There is, indeed, a peculiar problem of the service departments. There is a certain "discipline" or "loyalty" which prevents a military or naval officer from differing from his superior officer. During the war, both Mr Asquith and Mr Lloyd George found it necessary to call in other advice. Mr Asquith called in Lord Roberts, General Haig and Sir Henry Wilson to off-set the advice of Sir John French and the Chief of the Imperial General Staff. Similarly, after the Battle of Passchendaele Mr Lloyd George called in Lord Ypres and Sir Henry

<sup>1</sup> Balfour, *Chapters of Autobiography*, pp. 140-41.

<sup>2</sup> *Life of Lord Oxford and Asquith*, I, p. 346.



Wilson to off-set the advice of Sir Douglas Haig and Sir Henry Robertson.<sup>1</sup>

✓The problem of a Prime Minister in time of war is more difficult than that of an ordinary minister in time of peace. Questions which depend on *expertise* are usually settled by experts. In any department there must be a substantial measure of delegation; questions which come to the minister are usually of some political importance; and upon them his own opinion is better than that of his advisers. Moreover, the minister has at his hand the services of the permanent head of his department who "is not (except by accident) a specialist in anything, but rather the general adviser of the minister, the general manager and controller under the minister, with the *ultimate* responsibility to the minister for *all* the activities of the department (and of its officials)".<sup>2</sup> This distinguished civil servant has usually had experience outside his present department. He has, usually, none of that deference to experts which most ministers possess. He is able to put before the minister the possible alternatives, to select the weak points in the specialist's case, and to give his own opinion of rival theses.

Sometimes, it is true, the permanent head acts as a selective filter which allows to pass only those things of which it approves. Yet a strong minister can always open up the stream. Mr Lloyd George has stated his own practice.

I have never taken the view that the head of a Government Department is forbidden by any rule of honour or etiquette from sending for any person either inside or outside his office, whatever his rank, to seek enlightenment on any subject affecting his administration. If a minister learns that any subordinate in his department possesses exceptional knowledge or special aptitude on any question, it is essential he should establish direct contact with him... Freedom of access to independent information is quite compatible with order and due respect for the hierarchy, if that liberty is tactfully and judiciously exercised by the minister and wisely acquiesced in by the service.<sup>3</sup>

<sup>1</sup> Lloyd George, *War Memoirs*, IV, p. 2367.

<sup>2</sup> From a memorandum by Sir Warren Fisher (Permanent Secretary to the Treasury): Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1272.

<sup>3</sup> Lloyd George, *War Memoirs*, III, pp. 1171-2.

In an ordinary department, moreover, a minister who has the time or the patience to read minutes can easily make use of the collective wisdom of his department. For whether the question is so important that the file goes down from the permanent head to the officer most intimately concerned, or whether the file comes up from an assistant principal to the minister, it passes through several hands. In passing, it grows like a stream, and if the currents are not all in one direction the minister knows what they are. If they flow together the minister may be sure that, political considerations apart, it is safe to act.<sup>1</sup>

When the minister has taken his decision, he has at hand the expert staff to carry it out. He may generally assume that his assistants will loyally carry out his decision even if they do not approve of it. To give the example of Sir Robert Morant is, perhaps, rather like appealing to the practice of an archangel. Yet the Education Bill of 1906 supplies a good instance. It was in many respects the exact converse of the Bill of 1902, which might justly be described as Morant's "baby". Nevertheless, the minister acknowledged that in assisting with the Bill of 1906 Morant did his "very best and utmost to make it a workable measure".<sup>2</sup> A more cynical and, perhaps, more common example is that of a Colonial Office official who was informed that Sir Michael Hicks Beach had given notice of his intention to raise the question of the salaries of officers on the West Coast of Africa. The official replied that as soon as he could learn what it was that Hicks Beach proposed—whether to raise or lower—he would send "in either event, a perfect case".<sup>3</sup>

Sir Warren Fisher has stated the principles upon which civil servants act.

Determination of policy is the function of ministers, and once a policy is determined it is the unquestioned and unquestionable business of the civil servant to strive to carry out that policy with precisely the

<sup>1</sup> In spite of all this, the minister may run counter to his departmental opinion. When Mr Arnold-Forster succeeded Mr Brodrick at the War Office in 1902, "Bromley-Davenport, who only came in as Financial Secretary on Friday, opened his tenure of office by writing 'I don't agree' across the completed and approved papers of the War Office Journal scheme. How can good work be done with such fools?" *Diaries of Field-Marshal Sir Henry Wilson*, I, p. 53.

<sup>2</sup> *Life of Sir Robert Morant*.

<sup>3</sup> *Life of Sir Charles Dilke*, I, pp. 288-9.

same good will whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time it is the traditional duty of civil servants, while decisions are being formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may accord or not with the minister's initial view. The presentation to the minister of relevant facts, the ascertainment and marshalling of which may often call into play the whole organisation of the department, demands of the civil servant the greatest care. The presentation of inferences from the facts equally demands from him all the wisdom and all the detachment he can command.<sup>1</sup>

Yet the civil servant's function is to advise and not merely to put the relevant facts before the minister. He must, therefore, have opinions of his own. The "Treasury view" of tariffs was, until recently, well known. "No school of thought is so strong or so enduring as that founded on the great traditions of Gladstonian and Peelite finance."<sup>2</sup> The francophile tendencies of the Foreign Office are common knowledge.<sup>3</sup> Nor can more personal bias be excluded. Sir Arthur Nicholson, the Permanent Under-Secretary at the Foreign Office before the war, was a strong Ulsterman, and as a result of the Government's policy on Ireland (which had nothing to do with the Foreign Office) there grew up in 1914 a certain constraint between him and Sir Edward Grey.<sup>4</sup> Senior civil servants are, however, intelligent persons, and intelligent persons recognise their bias and do their best to articulate their premises. There is certainly no evidence of any kind of intrigue between civil servants and the Opposition. One may, sometimes, suspect their impartiality; but one never suspects their honesty. There is evidence that senior military officers, on the other hand, cannot always be trusted. Their "discipline" may stop short at the highest military rank, and their "loyalty" may not extend to the politicians who are in control. General Wilson, who was Director of Military Operations, and therefore a member of the War Office staff, in 1912, had many meetings with

<sup>1</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1268.

<sup>2</sup> *Life of Lord Randolph Churchill*, II, p. 180.

<sup>3</sup> Cf. the allegations about the Italo-Ethiopian peace proposals in December, 1935.

<sup>4</sup> Nicholson, *Lord Carnock*, pp. 401-2.

Opposition leaders to further the campaign for conscription, though this was contrary to Government policy;<sup>1</sup> and in 1913 and 1914 he had many meetings with Mr Bonar Law about the relation of the army to an Ulster rebellion.<sup>2</sup> On August 1st, 1914, Sir Henry Wilson got into touch with the Opposition leaders to bring pressure upon the Government to declare war. As a result, a semi-minatory letter was sent to the Government by Mr Bonar Law.<sup>3</sup> On August 4th he had further discussions with the Conservatives in order to induce the Government to send the Expeditionary Force to France.<sup>4</sup> Nor did these unconstitutional activities cease on his appointment to a staff post in the field. When he was on leave at the beginning of 1915 he saw the representative of the American press, Lord Milner, Mr Bonar Law, Mr Austen Chamberlain and the Editor of the *Morning Post*.<sup>5</sup>

His superior officer, Sir John French, was more circumspect but not wholly averse from the use of extra-constitutional methods. As General Officer Commanding at Aldershot he used his friendship with Lord Esher, who had influence with the King, to secure the acceptance of his views by the Secretary of State against those of the Army Council.<sup>6</sup> Above all, when he was Commander-in-Chief in France after the second Battle of Ypres, he gave information to *The Times'* military correspondent and sent two staff officers to interview Conservative leaders and others.<sup>7</sup> Whether this was due to his belief that the attack had failed because of the neglect of the Government to supply the necessary ammunition, as he and Mr Lloyd George suggest, or to his recognition of the principle of strategy that the best means of defence from attack by politicians is to attack politicians on their own ground, as Lord Beaverbrook suggests, is immaterial. The fact is that he took steps which might have resulted (and were thought at one time to have resulted) in the overthrow of the Government. His colleague, Sir

<sup>1</sup> *Diaries of Field-Marshal Sir Henry Wilson*, I, pp. 114, 116, 126.

<sup>2</sup> *Ibid.* I, pp. 131, 138, 140, 141, 143, 144, 147.

<sup>3</sup> *Ibid.* I, p. 154.

<sup>4</sup> *Ibid.* I, p. 156.

<sup>5</sup> *Ibid.* I, pp. 200-1.

<sup>6</sup> *Life of Lord Ypres*, p. 140.

<sup>7</sup> *Life of Lord Oxford and Asquith*, II, p. 141; Lloyd George, *War Memoirs*, I, pp. 199-200; *Diaries of Field-Marshal Sir Henry Wilson*, I, p. 226; Beaverbrook, *Politicians and the War*, I, pp. 90-4.

Henry Wilson, was by no means backward in the intrigues which resulted in the fall of the first Coalition Government in 1916.<sup>1</sup>

These are probably exceptional cases, but they illustrate one difficulty of political control. Another difficulty arises through the scattered nature of the British Empire. The "man on the spot" must be allowed a large measure of discretion; and he does not always possess either the sense of political realities or the recognition of his own position in the scheme of things to enable him to form a satisfactory judgment. Sir Bartle Frere brought on the Zulu War in 1878 without the consent of the Secretary of State.<sup>2</sup> The electric telegraph has reduced the power of "prancing proconsuls"; but even in present conditions a British representative can misconceive the nature of his instructions or interpret them in a spirit alien to the Government's intentions. It is possible to argue that British relations with Egypt in 1923-4 would have been easier if the High Commissioner had been different.<sup>3</sup> One of the first acts of the Labour Government was to recall him. Certainly a Viceroy of India can do either immense harm or immense good, even though he is at the end of a telegraph wire.

One difficulty has certainly been overcome. The "spoils" system does not exist in Great Britain. An independent body, the Civil Service Commission, has powers of control over nearly all admissions to the civil service. By an Order in Council of 1920, it is provided that subject to certain exceptions, "the qualifications of all persons proposed to be appointed, whether permanently or temporarily, to any situation or employment in any of His Majesty's Civil Establishments shall, before they are appointed, be approved by the Commissioners, and no person shall be so appointed until a certificate of his qualification has been issued by the Commissioners".<sup>4</sup> The exceptions are: (i) persons to whom a certificate has already been issued, (ii) persons who are appointed to certain senior positions directly by the Crown (usually,

<sup>1</sup> *Diaries of Field-Marshal Sir Henry Wilson*, I, pp. 298-9, 304.

<sup>2</sup> *Life of Sir Michael Hicks Beach*, I, ch. v.

<sup>3</sup> It is also said that Lord Allenby's ultimatum to Egypt after the murder of Sir Lee Stack would not have received Foreign Office sanction as to some of its terms.

<sup>4</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, Appendix I, p. 43.

these are filled by promotion), (iii) persons transferred by or under an Act of Parliament (as when a local or commercial service is transferred to the Crown), (iv) persons appointed to certain unestablished offices.<sup>1</sup>

Again, though every civil servant (subject to a few isolated exceptions) is legally dismissible at the pleasure of the Crown, in fact a person who holds a pensionable post is not dismissed without pension except for misconduct. Even such power of dismissal is hedged about with restrictions designed to protect the officer.<sup>2</sup> He may retire with an allowance before he attains the age of sixty if he shows that he is permanently incapacitated by ill-health, or if his office is abolished. He may be asked to retire with an allowance on account of his "inability to discharge efficiently the duties of his office"; but in such a case a Minute must be laid before Parliament.<sup>3</sup>

Above all, there is the ultimate control of Parliament exercised both directly and through the Select Committee of Public Accounts. Any misuse of departmental patronage which became known to the Comptroller and Auditor-General would be reported to Parliament and would be the subject of investigation by the Select Committee.<sup>4</sup> Any suspicion of "jobbery" would form the subject of an attack in Parliament. As Mr Disraeli said in 1858, "the interests of the party can never require an improper appointment: an improper appointment is a job, and nothing injures a party more than a job".<sup>5</sup> It is true that he added: "At the same time, there is nothing more ruinous to a political connection than the fear of justly rewarding your friends, and the promotion of ordinary men of opposite opinions in preference to qualified adherents."<sup>6</sup> But there are few appointments now available by which "qualified adherents" can be "rewarded". The appointments in question were naval lordships, which are now purely professional appointments. Similarly,

<sup>1</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, Appendix I, pp. 44-6.

<sup>2</sup> *Ibid.* pp. 29-30.

<sup>3</sup> *Ibid.* p. 64; Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1269.

<sup>4</sup> Cf. Epitome of the Reports from the Committee of Public Accounts, pp. 97, 235, 312-13, 316.

<sup>5</sup> *Life of Disraeli*, I, p. 1658.

<sup>6</sup> *Ibid.*

though Sir Charles Dilke said that Sclater-Booth (1874-80), Dodson (1880-82) and Goschen (1868-71) at the Local Government Board had appointed "political partisans or supporters".<sup>1</sup> the tightening up of Orders in Council and the psychological effects of the reforms of 1855 have, as far as can be judged, removed the political element from all appointments save those of some judgeships and Colonial governorships. Nothing delights an Opposition more than a suspicion of a "job". It is as anxious for the chase as a hound that has scented the fox.

<sup>1</sup> *Life of Sir Charles Dilke*, I, p. 504.

## Inter-Departmental Relations

As the functions of Government expand, the difficulty of securing co-ordination of activity increases. Even within a department unity of action is not always attained. There is always the danger that a department may become "a mere collection of specialised and watertight compartments with no common policy or principles of procedure".<sup>1</sup> This danger is minimised by the general control of the minister, the watchfulness of the permanent head, and a periodical examination of departmental organisation. The danger of isolated, unco-ordinated, and even contradictory action by separate departments is even greater. For, though the Treasury,<sup>2</sup> the Prime Minister,<sup>3</sup> and above all the Cabinet,<sup>4</sup> provide for a substantial measure of general co-ordinating control, normal administration must frequently be conducted by distinct authorities and may sometimes be operated on opposed principles.

( Frequently departments deal with the same subject-matter from different angles. Thus, the Board of Trade is concerned with trade and the Ministry of Labour with employment. The Board of Education is concerned with the health of children at school, and the Ministry of Health with the health of children not at school. The Ministry of Health and the Home Office control special kinds of schools which are not subject to the control of the Board of Education. Poor persons migrate, so to speak, between the general control of the Ministry of Health, the Ministry of Labour and the Unemployment Assistance Board.

( Frequently, too, there is opposition between departments. There are claims to the control of marginal services which give rise to acute differences.) Government departments have been found competing with each other for supplies in the open market. The departments

<sup>1</sup> Sir H. Llewellyn Smith, *The Board of Trade*, p. 228.

<sup>2</sup> *Post*, Chapter VII.

<sup>3</sup> *Post*, Chapter VIII.

<sup>4</sup> *Post*, Chapter IX.



complain of the buildings and furniture provided by the Office of Works. There are difficulties with the Stationery Office about printing and the supply of books. Objections are made to the methods by which one department performs services as the "agent" of another. Above all, a department will make a strenuous opposition to any redistribution of functions which involve a reduction of its own staff, and especially to the creation of a new department. "All new departments are viewed with a certain measure of suspicion by the older establishments. But the department [the War Office] which mattered most to the success of the new Ministry [of Munitions] regarded it not only with distrust but with profound dislike, veiled behind a mask of contempt."<sup>1</sup> Civil servants are human. They dislike loss of power; they dislike above all anything which threatens their own positions, their emoluments, and their prospects of promotion.

The difficulty must not be exaggerated. There are few differences that cannot be resolved by a few words of conversation between the two officers most concerned. A reasonable permanent head will not allow minor questions of prestige to hinder the public service. Difficulties can be avoided at the outset by a telephone conversation. Minutes are apt to pass and repass and files to burst their bindings. Only in the last resort does the question reach the ministers concerned. Then, more often than not, they can settle the matter between them. If they cannot, they can do no more than appeal to the Prime Minister or to the Cabinet. Sometimes such questions are threshed out in Cabinet; more often they are referred to an impartial minister or to a committee.

Thus, in 1907 the Admiralty refused to refer a paper on *Invasion* to the Committee of Imperial Defence. Mr Haldane on behalf of the War Office appealed to the Prime Minister, and Sir Henry Campbell-Bannerman overruled the Admiralty.<sup>2</sup>

In 1914 there was a conflict between the Local Government Board and the Board of Education as to the control of medical assistance to children under school age. The Board of Education pointed out that such children would come under its control when they reached school

<sup>1</sup> Lloyd George, *War Memoirs*, I, p. 238.

<sup>2</sup> Esher Papers, II, 246-7; and see *post*, pp. 170-1.

age, and that it controlled such children in nursery schools. The Local Government Board, on the other hand, argued that the service was a development of the maternity service under its control. A conference was arranged, with Lord Haldane in the chair, to settle the matter, and the conference agreed to an inter-departmental committee to control the service.<sup>1</sup> In the same year there was a dispute between the same departments as to sanatoria for children, school sanatoria, etc., and the whole matter of control of grants was apparently referred to the Cabinet.<sup>2</sup> It should be added that disputes between the Ministry of Health and the Board of Education on medical matters rarely arise because they now have a common Chief Medical Officer.

The growth of aerial warfare led to a long controversy between the War Office and the Admiralty as to the operation of their respective air arms. In 1915 the Air Board was created under Lord Curzon so as to act as a co-ordinating committee. This proved ineffective owing to the obstruction of the Admiralty. Lord Curzon then brought the matter before the Cabinet. Here a long debate ensued between Lord Curzon and Mr Balfour. Terms of a settlement were agreed by the Cabinet, but the change of government enabled the question to be reopened. Mr Lloyd George refused to go back on the arrangement, and the Air Board was reconstituted with enlarged terms of reference. The success of the German air raids led the Cabinet to believe that a much more energetic policy had to be followed. A Cabinet Committee recommended a separate Air Ministry and Air Force. The Admiralty objected, but the War Cabinet accepted the report and the necessary legislation was introduced and passed.<sup>3</sup>

( In 1917 the Shipping Controller proposed that the Transport Department of the Admiralty should be transferred to him. After consultation with the Prime Minister, he drafted a memorandum. The Admiralty objected, and the matter was referred to the War Cabinet, who agreed with the Controller.<sup>4</sup> )

<sup>1</sup> Addison, *Four and a Half Years*, I, p. 17.

<sup>2</sup> *Ibid.* I, pp. 42, 44.

<sup>3</sup> Lloyd George, *War Memoirs*, IV, Ch. LVII; see also *Life of Lord Curzon*, III, pp. 145-7.

<sup>4</sup> Lloyd George, *War Memoirs*, III, pp. 1224-6.

Munitions of war provided another frequent source of disputes during the war of 1914-18. The Ministry of Munitions was set up in 1915 in spite of the opposition of the War Office. But when it was established difficulties at once arose. Though the Ministry was concerned with supply, the Ordnance Board at the War Office was concerned with design. The War Office claimed that design was a question of strategy, to be determined by the Ordnance Board in consultation with the army in the field. The Ministry claimed that design must depend on cost, the availability of material, and the ease and efficiency of production, all of which were matters for the Ministry. Mr Lloyd George, on behalf of the Ministry, therefore proposed that the Board should be transferred to his control. The Prime Minister (Mr Asquith) discussed the situation with the two ministers, and it was finally agreed that the Ordnance Board should be reconstructed so as to represent the Ministry, the War Office and the Admiralty. In substance, it came under the control of the Minister of Munitions.<sup>1</sup>

Another dispute arose between the two departments as to the calling to the forces of munition workers. This was apparently referred to the War Council and thence to a small committee.<sup>2</sup>

The co-ordination of the service departments has for many years been a matter of difficulty. The defence of the country and the conduct of war involve general problems and general policies. Most kinds of warfare demand the co-operation if not of all three services at least of two of them. It has accordingly been proposed many times that the three service departments should be superseded by a Ministry of Defence; this was in fact proposed by the Geddes Committee in 1922,<sup>3</sup> and was accepted in principle by the Government of the day. The proposal was not, however, carried out, and other committees have advised against any such step.<sup>4</sup> As regards policy, the Cabinet is the co-ordinating machine. Common strategy is determined by the Com-

<sup>1</sup> Addison, *Four and a Half Years*, I, pp. 146-50, 296-7.

<sup>2</sup> *Ibid.* I, p. 235.

<sup>3</sup> First Interim Report of the Committee on National Expenditure, p. 8.

<sup>4</sup> In 1936 it was decided to appoint a special minister as Deputy-Chairman of the Committee of Imperial Defence. See *post*, pp. 112, 241.

mittee of Imperial Defence<sup>1</sup> and especially by its Chiefs of Staff Sub-Committee.<sup>2</sup> The other matter which demands co-ordination is that of supplies. It was sometimes found during the war that the service departments were sometimes bidding against each other and so putting up prices.

A Cabinet Committee decided in 1923 that a Contracts Co-ordination Committee should be set up.<sup>3</sup> It consisted originally of the Directors of Contracts of the service departments.<sup>4</sup> But on the recommendation of the Estimates Committee, representatives of the Post Office, the Office of Works and the Treasury were added.<sup>5</sup> This Committee had in 1928 five sub-committees, dealing respectively with foodstuffs, clothing and textiles, mechanical transport, general stores, and medical and veterinary stores.<sup>6</sup> These sub-committees may contain representatives of other departments. For instance, the sub-committee on mechanical transport contained in 1932 representatives of the Admiralty, War Office, Air Ministry, India Office and Post Office.<sup>7</sup> Moreover, each sub-committee may have further sub-committees. In 1928 there were eleven sub-committees of the general stores sub-committee.<sup>8</sup> Where convenient the departments may be represented on these sub-sub-committees. Thus the mechanical transport sub-committee had in 1932 a sub-committee on petrol, oil and grease, and on it served representatives of the Admiralty, War Office, Air Ministry, Post Office, Stationery Office, Office of Works and Home Office.<sup>9</sup>

This array of committees provides an organisation for standardising patterns and designs which thus enables bulk supplies to be purchased more readily and more easily. This in turn enables tenders to be synchronised, common specifications to be used, and costing investigations to be carried out in co-operation.<sup>10</sup> In many cases, too, contracts can be

<sup>1</sup> *Post*, Chapter x.

<sup>2</sup> *Post*, pp. 243-5.

<sup>3</sup> See Report of the Committee on National Expenditure (1931), p. 65. It is technically a sub-committee of the Committee of Imperial Defence.

<sup>4</sup> 194 H.C.Deb. 5 s., 30 (1926).

<sup>5</sup> Reports from the Select Committee of Public Accounts (1931), pp. 420-1.

<sup>6</sup> 194 H.C.Deb. 5 s., 30; 215 H.C.Deb. 5 s., 1034.

<sup>7</sup> Reports from the Select Committee of Public Accounts (1932), pp. 543-4.

<sup>8</sup> 215 H.C.Deb. 5 s., 1034.

<sup>9</sup> Reports from the Select Committee of Public Accounts (1932), pp. 543-4.

<sup>10</sup> 194 H.C.Deb. 5 s., 30.

entered into by one department not only on its own behalf, but also as "agent" for other departments. The following examples of Air Ministry supplies were given in 1926.<sup>1</sup>

<i>Service or Articles</i>	<i>How supplied or purchased</i>
1. Food supplies at home.	War Office.
2. Medical supplies.	Joint contract with War Office. <sup>2</sup>
3. (a) Clothing of specific Navy and Army pattern.	Admiralty and War Office respectively.
(b) Necessaries, i.e., under-clothing, etc.	War Office.
4. Rifles, small-arms ammunition.	War Office.
5. Furniture and barrack equipment.	Office of Works and War Office.
6. Stationery requirements and photographic paper.	Stationery Office.
7. Iron work, grates, etc., for buildings.	Largely drawn from War Office contracts.
8. Torpedoes and compasses.	Admiralty.
9. Ropes and cordage.	Admiralty.
10. Marine craft and spares.	Admiralty.
11. Carbons.	Joint contract with three departments.
12. Optical glass.	Joint contract with three departments.
13. Petrol and lubricants.	Contracts placed concurrently after joint comparison of tenders and of best allocations by Air Ministry, War Office, Admiralty, Post Office and Office of Works. <sup>3</sup>
14. Accountancy investigations.	Use of Admiralty and War Office staff to supplement that of Ministry.
15. Technical costings of engines, etc.	Use of Joint Section located at Admiralty.

<sup>1</sup> 194 H.C. Deb. 5 s., 31.

<sup>2</sup> And Ministry of Pensions: Report from the Select Committee on Estimates, 1930-31, p. xxix.

<sup>3</sup> This has apparently been extended to other departments.

This list might be extended. For instance, household coals are obtained by concurrent contracts placed by the departments after joint comparison of tenders, and contracts for condensed milk are placed by the Admiralty and War Office after consultation.<sup>1</sup> The Post Office buys bicycles for most departments.<sup>2</sup> There are, no doubt, other examples.<sup>3</sup>

The system of agency buying is not without disadvantages. "It is a matter of experience that, other things being equal, there are definite advantages in the using department being also the buyer; when the functions are separated, correspondence is increased, the administration of the contract is complicated, the remedying of complaints as to quality or delivery is less prompt, and the settlement of dispute(s) with contractors, especially if they involve the payment of a compensation, is rendered more difficult."<sup>4</sup> A case for agency buying can be made out only where the requirements of the departments concerned are brought to a common standardised pattern or specification, and it is the function of the technical sub-committees of the Contracts Co-ordinating Committee to draw up such patterns or specifications wherever possible. Even then it does not always follow that agency buying is advantageous. For instance, the Admiralty does not share in the joint contract for medicines because its conditions as to packing, etc., are less onerous, and it can thus buy more cheaply. Similarly, the War Office running contracts for building stores and materials are not necessarily used by other departments because they need not demand the same onerous conditions.<sup>5</sup>

Again, bulk purchases are uneconomical where they result in an aggregation of demands on a limited and sensitive market. Tenderers then have recourse to options from other manufacturers, in case they should secure the contract and find themselves without supplies, with the result that the request for tenders sends up prices. Thus, it has been

<sup>1</sup> 214 H.C. Deb. 5 s., 1034; and see, as to coals, Report from Select Committee on Estimates, 1932-3, p. xviii.

<sup>2</sup> Report from the Select Committee on Estimates, 1932-3, pp. xviii-xix.

<sup>3</sup> E.g. the aggregation of demands for gas, water, and electric light; Reports from the Select Committee of Public Accounts, 1931, pp. 420-21.

<sup>4</sup> Report from the Select Committee on Estimates, 1930-31, p. xxix.

<sup>5</sup> *Ibid.* pp. xxix-xxx.

found that in respect of copper it is advisable to invite tenders for a fraction only of the quantity required, and requirements can then be distributed among tenderers by agreement of the departmental supplies officers. Bacon has such a sensitive market that the practice of inviting tenders has been abandoned, and supplies are obtained through brokers.<sup>1</sup>

Even where this is not so, there is usually a limit beyond which aggregation will not diminish price. The War Office buys frozen meat for the Air Force, but not for the Navy. To add naval requirements to the others would not have any effect on the price. This is true also of some manufactured goods. Firms are prepared to quote low prices in order to get Government contracts, since they are regular, a good advertisement, and a testimonial to standing and quality. But Government contracts are never certain, since a competitive tender will cause a firm to lose its contract. A firm usually makes a higher rate of profit on private contracts, and desires to use the Government contract to strengthen its private connection, not to fill its order book with a huge Government contract. Sometimes, therefore, it is necessary to divide a contract among tenderers. Also, because of the liability involved in a huge contract, a lower price is sometimes quoted for a small contract than for a larger. For example, one department is able to obtain a lower tender for the delivery of 500 tons of coal at a certain station than another department can secure for a delivery of 13,500 tons at the same station.<sup>2</sup>

In such cases the technical sub-committee suggests a synchronising or a spacing of tenders, and consultation among the departments concerned prevents competing offers or variations in price. Consultation also enables information to be obtained as to the trustworthiness of tendering firms and for common investigation of a firm's capacity, financial standing and, in the few cases where this is necessary, of accounts. Synchronisation of tenders enables the several departments to allot their requirements among tenderers by agreement.

In other matters co-operation is possible. The Air Force maintains no separate hospitals where it can use the hospitals provided by other

<sup>1</sup> Report from the Select Committee on Estimates, 1930-31, p. xxxii.

<sup>2</sup> *Ibid.* pp. xxxii-xxxiii.

departments or civil hospitals. Research is to some extent co-ordinated through three co-ordinating boards for chemistry, physics and engineering, and civilian wireless research is co-ordinated by the Radio Research Board.<sup>1</sup>

These examples relate to, or grew out of, the specific problems of the three service departments, but there are others not so related. The Permanent Consultative Committee on Official Statistics represents no less than twenty-five departments, and among other things it produces the invaluable *Guide to Current Official Statistics*.<sup>2</sup> Joint advisory committees are not infrequent. They are especially necessary where functions are exercised by different departments in England and Wales, Scotland and Northern Ireland. The Agricultural Research Council, the Market Supply Committee and the Sea Fish Commission, for instance, advise the various departments concerned with agriculture and fisheries. The National Insurance Joint Committee and the Therapeutic Substances Joint Committee advise the Ministry of Health and the Department of Health for Scotland.

In a few cases there are joint sub-departments. The most important is the Department of Overseas Trade, which has its own minister but is subordinate to the Foreign Office and the Board of Trade. The State Management Districts Council is a joint body, controlled by the Home Office and the Scottish Office, and controls the State-owned licensed premises in England and Scotland. The Medical Research Council, though subordinate to the Privy Council, contains representatives of several departments.<sup>3</sup>

Such methods of co-operation do not necessarily solve the problem of inter-departmental relationship. Control by a single minister secures a more effective unity than any system of committees and sub-committees. As Mr Winston Churchill said in 1920, in defending his continuance as Secretary of State for Air as well as Secretary of State for War, "I can

<sup>1</sup> 214 H.C.Deb. 5 s., 1035-36.

<sup>2</sup> See the 1934 volume, p. 2.

<sup>3</sup> A peculiar method of co-operation exists between the Dominions and Colonial Offices. They use the same buildings and have certain sub-departments in common. This is true also of the Cabinet Office and the Secretariat of the Committee of Imperial Defence.



settle simply and easily and without friction a whole series of inter-departmental questions which otherwise would have to be fought out in the Cabinet, or delayed indefinitely during the ever-growing congestion of public business for want of Cabinet time.”<sup>1</sup> Yet there are limits to the amount of work which a minister can do; it is usually said, for instance, that a Minister for Defence could not effectively control the three service departments. To this it is sometimes replied that subordinate ministers could control intra-departmental questions, rather as the Secretaries to the Department of Overseas Trade and the Mines Department deal with ordinary matters, while inter-departmental questions could be dealt with by a Cabinet minister.<sup>2</sup> The experience of the war has shown, too, that an emergency calls for an increase in the number of departments and at the same time a more effective measure of central control. Possibly inter-departmental questions could be reduced in number and importance by a more logical division of functions.<sup>3</sup>

These are, however, the more formal methods of regulating inter-departmental relations. It is not possible to put on paper the informal methods of co-operation. Whether a file goes from one department to another depends very largely on the personality of the officers concerned and the complexity of the issue. There are few questions which cannot be settled by a telephone conversation or a talk over lunch. If there is an inter-departmental dispute, or if some problem arises demanding inter-departmental co-operation, an *ad hoc* committee is the obvious solution.<sup>4</sup> The practice varies from department to department

<sup>1</sup> 126 H.C.Deb. 5 s., 1623.

<sup>2</sup> In 1936 a “Minister for the Co-ordination of Defence” was appointed to deal with inter-departmental questions, but no change was made in the status or functions of the ministers of the service departments. See *post*, pp. 240-1.

<sup>3</sup> Cf. Report of the Machinery of Government Committee (1918), pp. 7-10.

<sup>4</sup> The extent to which consultation by means of informal committees is possible is indicated by the following passage:

“In the autumn of 1934 the Milk Marketing Board for England and Wales appointed a Committee... to advise and assist that Board in regard to the expenditure of the funds made available by section II of the Milk Act of 1934 for the purpose of increasing the consumption of milk. This Committee... after an informal conference, attended by representatives of the Board, various Government Departments, the Medical Research Council and the Advisory Committee, decided that an investigation should be undertaken with the object of comparing the nutritive value of milk for the growth and development of school children, and that those in

and from time to time. It depends in part on the senior civil servants upon whom is cast the duty of acting or recommending action. It depends also in part upon the character of the minister, whether he is impatient of departmentalism or readily accepts battle on behalf of his department. These matters are among the imponderables of the Constitution.

attendance at the conference should constitute a supervising committee. This body... is called the Milk Nutrition Committee.

"The latter Committee agreed to place the conduct of the scientific side of the research in the hands of a sub-committee composed of representatives of the Ministry of Health, the Ministry of Agriculture and Fisheries, the Board of Education, the Department of Agriculture for Scotland, the Department of Health for Scotland, the Scottish Education Department, the Medical Research Council, and the Rowett Research Institute, in conjunction with the representatives of the National Union of Teachers and Officers of the Milk Marketing Board for England and Wales, and the Scottish Milk Marketing Board." (*The Health of the School Child*, Annual Report of the Chief Medical Officer of the Board of Education for 1934, p. 31.)

## CHAPTER VII

# Treasury Control

### § 1. *Treasury Control of the Civil Service.*

The Treasury must necessarily be the most important of the departments. It must necessarily be a prime element in co-ordination. For every governmental activity involves finance; and unless an effective check is imposed, and co-ordination provided for, the financial consequences of departmental action cannot be foreseen.

It is not entirely an accident of history that the Prime Minister is First Lord of the Treasury. The employment of personnel is, in the first instance, a financial question. The administration of patronage was one of the means for securing a Government majority both in the House of Commons and in the country. Patronage was, therefore, a question for the Treasury and for the political leader. If the Prime Minister became First Lord of the Treasury, the power of patronage was placed in his hands. The reforms of the late eighteenth and early nineteenth centuries, culminating in the creation of the Civil Service Commission in 1855, converted the distribution of patronage into the control of a permanent civil service. The civil service is therefore controlled by the Treasury under the direction of the Prime Minister.

This means, for example, that the consent of the Prime Minister is required for the appointment of Permanent Heads of departments, their deputies, principal financial officers and principal establishment officers.<sup>1</sup> As a result, the senior posts in the civil service have not a purely departmental character, but are frequently filled by transfer from other departments. This, in its turn, assists in creating the notion of the unity of the civil service. The service estimate of the capacities of individual officers for higher appointments is obtained and collated by informal

<sup>1</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1269 (Evidence of Sir Warren Fisher, Permanent Secretary to the Treasury). This was laid down in a Treasury minute in 1920, regularising and extending the then existing practice: see 149 H.C. Deb. 5 s., 1565-6.

discussions between the Permanent Secretary to the Treasury and his senior service colleagues, and it is the duty of the former, when a vacancy occurs of a kind requiring the Prime Minister's sanction, to submit advice for the consideration of the Prime Minister, and the departmental minister concerned.

In the second place, Treasury control of the civil service means that the general regulations by which the civil service is governed are laid down by the Treasury.

The post-war theory of the control of civil service organisation rests on active co-operation and goodwill between the Treasury on one hand and the department on the other. They are jointly trustees for the efficient and economical administration of the service. In the Treasury there has been since 1919 an Establishments Department which has specialised in questions of organisation of departments, personnel, superannuation and so on. In the departments, responsible officers have been appointed directly answerable to the head of the department on questions of office management. For a number of years now there has been going on a regular overhaul of staffs and establishment officers, aided by advice and assistance from the expert Department of the Treasury... We are satisfied that the method of control adopted is well calculated to maintain a high standard of administration.<sup>1</sup>

"Advice and assistance" are the velvet glove. The fist is inside. It is attached to the body of financial power, shortly to be described. Civil servants are servants of the Crown. Speaking legally, the Crown in its discretion can lay down what regulations it pleases for the conduct of its officers. Yet the Crown has annually to seek from Parliament the means for the payment of its officers; and this means, in practice, that the Treasury has to approve departmental estimates and submit them, or agree to their submission, to the House of Commons. The only statutes applying to civil servants are the Superannuation Acts and certain statutes prohibiting some civil servants from being elected to the House of Commons. But even the grant of superannuation is wholly discretionary, and is therefore under the control of the Treasury. Apart from these statutes, the civil service is governed by formal and informal rules issued under the prerogative powers of the Crown indi-

<sup>1</sup> Report of the Committee on Public Expenditure (1931), p. 22.

cating, in law, not the rights of civil servants (for their legal rights differ from those of ordinary citizens only in minor matters) but the practices which the Crown intends to follow and to have followed in the government of the civil service.

The major principles are contained in Orders in Council. The earlier Orders, beginning with that of 1855, regulated admission to the service. The Civil Service Commission was set up under these Orders. Later, they were extended to deal with the remuneration, hours of duty and other conditions of service of the classes of civil servants common to the departments. Later still they were applied to the conditions of service of "all permanent officers in His Majesty's Civil Establishments". These Orders were consolidated in 1910, and the consolidated Order has been amended by other later Orders. Since conditions of service are, primarily, questions of finance, any such amending Orders are necessarily issued at the request of the Treasury. But the later Orders have left many matters to be dealt with by regulations issued by the Civil Service Commissioners and the Treasury. In substance, therefore, conditions of service are dealt with by Treasury regulations.<sup>1</sup>

The matters dealt with in Orders or in formal regulations are, however, comparatively simple in character and few in number.

Decisions affecting the civil service generally are normally promulgated by Treasury circulars addressed to the permanent heads of all departments. Thus, when a decision is reached (whether by an agreed settlement with the Association concerned, or by an award of the Industrial Court, or in any other manner) involving some change in the remuneration or terms of employment of civil servants as a whole or of a class of civil servants common to the service, authority to give effect to the change is conveyed to departments by Treasury circular.<sup>2</sup>

All this is implicit in "the power of the purse". The administrative *cadre* of each department is approved by the Treasury. The number of

<sup>1</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, Appendix I, pp. 23-7. For the history up to 1910, see Royal Commission on the Civil Service (1912-15), 4th Report, pp. 7-24. The powers of the Treasury are in practice limited by the extensive machinery for the negotiation and submission to arbitration of civil service conditions. Though there is nothing to prevent the Treasury from refusing to accept the decision of, e.g., the Industrial Court, it invariably accepts it.

<sup>2</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, Appendix I, p. 27.

officers of each class and the scale of salaries of each class are approved by the Treasury. They are, in fact, inserted in the Estimates. Moreover, as will shortly be explained, the Treasury has financial control apart from its control over Estimates. Accordingly, no increase of staff, no change of classification, and no alteration of the conditions of service in any class, can be effected without Treasury sanction. This power is not wholly dependent upon the financial powers of the Treasury. For an alteration may not involve increased expense; it may, indeed, reduce administrative costs. Yet it is the concern of the Establishments branch of the Treasury.

Moreover, Treasury control of civil service conditions is by no means limited to appointments and salaries.

Treasury circulars or minutes are sometimes issued on matters of discipline. It is no part of the function of the Treasury to issue instructions which would derogate in any way from a Minister's responsibility to Parliament for the conduct of his department, or would interfere with the necessary control of the staff of the department by those responsible for its immediate management and direction. Apart from the constitutional aspect of the matter the different conditions prevailing in different departments and the nature of the duties to be performed make special departmental rules or instructions necessary. But from time to time it has been found necessary, particularly in cases where diversity of practice would be indefensible, to lay down general regulations applicable to the whole civil service.<sup>1</sup>

In short, "as a result of its special constitutional position the Treasury... has come to be charged with the duty of acting on behalf of His Majesty's Government in matters affecting the civil service as a whole and with responsibility for the general supervision and control of the civil service".<sup>2</sup> Consequently, though until recently the civil service was only a series of departments which did not think of themselves as merely units of a complete and correlated whole, the situation has now changed. Status, remuneration, prestige and organisation have been assimilated.<sup>3</sup>

<sup>1</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, Appendix I, p. 27.

<sup>2</sup> *Ibid.* p. 23.

<sup>3</sup> Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1267.

The general supervision and control is vested constitutionally in the Lords of the Treasury, of whom the Prime Minister is one. They are advised by the Permanent Secretary to the Treasury, who bears in addition the title of "Head of the Civil Service" and as such acts as a member of the Committee of Imperial Defence.<sup>1</sup> This post is said to have been created by Treasury minute in 1867, but the minute has been lost.<sup>2</sup>

## § 2. *Financial Control in General.*

Control over the civil service is, however, merely one aspect of Treasury control. The most effective power of that department lies in its control over finance, exercised by or under the direction of the Chancellor of the Exchequer in consultation—as all ministers consult—with the Prime Minister and under the control of the Cabinet. This power dates from the great financial reforms of Sir Robert Peel<sup>3</sup> and arises out of the responsibility of the Chancellor of the Exchequer, under Cabinet control, for the financial policy of the Government.

The major functions of the Treasury have been summarised by the Machinery of Government Committee:<sup>4</sup>

(a) Subject to Parliament it is responsible for the imposition and regulation of taxation and the collection of the revenue, for which purpose it has the assistance of the Revenue Departments.<sup>5</sup>

(b) It controls public expenditure in various degrees and various ways, chiefly through the preparation or supervision of the estimates for Parliament.

<sup>1</sup> During the war the office was held jointly by two Permanent Secretaries, but the old position was restored in 1919 on the appointment of Sir Warren Fisher: see Mr A. Chamberlain's statement, 120 H.C.Deb. 5 s., 743 (1919).

<sup>2</sup> 194 H.C.Deb. 5 s., 295.

<sup>3</sup> *Ibid.* 322.

<sup>4</sup> Report of the Machinery of Government Committee (1918), p. 16.

<sup>5</sup> The Board of Inland Revenue, the Board of Customs and Excise, and the Post Office. But, though the Post Office Estimates are included in the Estimates for Revenue Departments, it is no longer a Revenue Department strictly, for the Treasury takes only a fixed contribution from the Post Office: see Finance Act, 1933, Part IV. For the inapplicability of the term see 298 H.C.Deb. 5 s., 1564. For the arrangement between the Post Office and the Treasury, see 280 H.C.Deb. 5 s., 2255-6.

(c) It arranges for the provision of the funds required from day to day to meet the necessities of the public service, for which purpose it is entrusted with extensive borrowing powers.

(d) It initiates and carries out measures affecting the public debt, currency and banking.

(e) It prescribes the manner in which the public accounts should be kept.<sup>1</sup>

It is obvious that not all of these functions involve control by the Treasury over the actions of other departments. Some of them are, so to speak, the peculiar departmental functions of the Treasury itself. We are here concerned with the control over expenditure and the control over accounts. In substance, these are not capable of being dissociated. For control of accounts is one of the methods by which control over expenditure is secured.

The control over expenditure involves far more than a mere concern for the financial stability of the nation's finance during the current or the ensuing year. Though, as will be explained, Treasury control is merely the control of the Chancellor of the Exchequer, subject to the power of the Cabinet, no efficient Chancellor is concerned only with immediate expenditure or the balancing of his own budgets. He would not be exercising his function properly if he assumed that future expenditure was the concern of his successors. It is his business to safeguard the revenue as far into the future as it is possible to foresee. Accordingly, the Treasury is as concerned with future contingencies as it is with immediate expenditure. The "policy of the Treasury" in relation to technical matters is not subject to variation from year to year or from Government to Government. It is, therefore, not "Treasury policy" but "Treasury practice". That practice is, in part, laid down in Treasury minutes; in part, it is to be found in the resolutions and recommendations of the Select Committee of Public Accounts and the Select Committee on Estimates; in part, however, it is just practice, developed over a long period since the reforms of Sir Robert Peel and Mr Gladstone.

<sup>1</sup> See also a note by Sir R. (Lord) Welby as to the functions of the Chancellor of the Exchequer, *Life of Childers*, II, pp. 148-9.



<sup>1</sup> Proposals which involve substantial increases in expenditure, immediately or contingently, are obviously of such an order of magnitude that they require Cabinet sanction. A Cabinet decision is binding on the Chancellor of the Exchequer and therefore upon the Treasury. But care is taken to secure that no decision is taken before the financial aspects of the proposal have been fully considered by the Treasury and placed before the Cabinet by the Chancellor of the Exchequer. The details are set out in a subsequent chapter;<sup>2</sup> but it should be said here that no proposal is circulated to the Cabinet until the Chancellor's consent has been obtained, and that the Chancellor does not give his consent until the financial implications have been studied and, if necessary, a financial memorandum also circulated. Moreover, Cabinet approval of expenditure does not render unnecessary the departmental sanction of the Treasury. The policy is binding on the Treasury, but the details and the execution are still subject to Treasury control.<sup>2</sup>

<sup>2</sup> Proposals of a more departmental nature do not need Cabinet sanction. But if they contain financial implications, they need the approval of the Treasury.<sup>3</sup> Any changes in the number or classification or conditions of service of the staff necessarily require Treasury consent,<sup>3</sup> for reasons already explained. Any expenditure on works above £1000, even if already sanctioned by the Treasury, or by the Cabinet, or by Parliament, also needs express Treasury approval. If, for instance, the War Office desired to acquire a piece of land on Salisbury Plain, or to provide additional barrack accommodation at Aldershot, Treasury sanction for the proposal and the price would have to be obtained. Provision would also have to be made in the Army Estimates, which again need Treasury sanction. The Estimates would be presented to Parliament and the expenditure be authorised in the Appropriation Act. Moreover, in making the contracts the War Office must abide by general Treasury regulations.<sup>3</sup> Indeed, Treasury sanction would be

<sup>1</sup> *Post*, pp. 189-90.

<sup>2</sup> See Epitome of the Reports from the Public Accounts Committee, 1918, pp. 587-8, and Exchequer and Audit Departments Act, 1921, s. 1 (3).

<sup>3</sup> First and Second Reports from the Select Committee on Estimates (1926), App. II.

necessary even if additional expenditure was not required.<sup>1</sup> If, for instance, the War Office desired to sell one piece of land and to acquire another, Treasury sanction would be necessary.<sup>2</sup> Nor would it matter that a profit would be made on the transaction. For, if a profit can be made, it must be the largest possible profit. It is the business of the Treasury to see that His Majesty, like a good householder, buys in the cheapest market and sells in the dearest.

This principle can be applied to works but cannot be applied in its full rigour to all the activities of the departments. The Treasury cannot supervise every contract, though it can, and does, lay down the general principles upon which contracts should be made. In particular, it cannot control the specifications laid down by the service departments; indeed, those departments possess in this respect a somewhat greater independence than is possessed by the civil and revenue departments. But the Treasury expects to be consulted whenever a new kind of contract is proposed, or where it is proposed to limit the field of tender or to substitute contracts by private negotiation for contracts by public tender. Above all, "any proposal involving an increase in expenditure or any new service, whether or not involving an increase in the total expenditure of the Department, would require Treasury sanction".<sup>1</sup> Or, as the Treasury put it fifty years ago: "Before any proposal involving serious increase in expenditure is adopted... it should be submitted to my Lords [of the Treasury], with a statement of which it might be convenient to receive several copies, in print, showing at length..."<sup>2</sup>

Moreover, though the phrase "Treasury control" is used, it must not be thought that it means that someone is told "to see what Johnny is doing and tell him to stop it". Treasury control, like parental control, has changed its connotation in recent years. Every department is anxious to increase its expenditure, but only because it desires to increase its services. It is as much interested as the Treasury in the economical administration of its existing services. For the Treasury is

<sup>1</sup> A statement accepted by Sir R. R. Scott, for the Treasury, Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 2.

<sup>2</sup> Second Report from the Select Committee of Public Accounts, Epitome of the Reports of the Committees of Public Accounts (1926), p. 60; repeated in Second Report, 1885, *ibid.* p. 169; see also the Third Report (1920), *ibid.* pp. 608-9.

concerned primarily in the almost constant increase in the total of the budget. It will look askance at any proposal which will involve an increase of expenditure, immediately or contingently. It is likely to be more complaisant if a service can be extended without an increase in cost. Consequently, a department welcomes, within limits, the collaboration of Treasury officials. In any case, both the minister and the permanent head feel a personal responsibility for the efficiency of their department.

This collaboration is the more effective because each of the large departments has its own financial staff. It is the business of that staff to perform within the department the function which the Treasury performs throughout the administrative system. Though the dog inside the house has to protect the people inside against the dog outside, it has also to see that the people inside do not provoke the dog outside. For that dog is rather a big one; and the dog inside knows which dog will bite which if a fight ensues. Consequently, if one may leave the metaphor, collaboration between the financial staff of the department and the appropriate staff of the Treasury is close.

<sup>4</sup>In the result, the Treasury is frequently consulted before the need for formal sanction arises, especially on large schemes and establishment matters. <sup>5</sup>The appropriate departmental officer works out a scheme and there comes a point at which he says: "It's no use going any further till we know what so-and-so at the Treasury thinks about it." Accordingly, he crosses to Treasury Chambers to see "so-and-so". Possibly he takes with him the technical expert. <sup>6</sup>In the result the Treasury is seized of all the facts and gets in on the ground floor. Then, when the scheme is elaborated, it is formally submitted to the Treasury and as formally approved by "My Lords".

All this is quite independent of control over the Estimates. It arises before the Estimates or the Supplementary Estimates are submitted. It is the normal and, as will be seen, the more effective part of Treasury control.

### § 3. *Control over Estimates.*

Certain items of expenditure are authorised by Parliament by permanent statutes and therefore do not appear in the Estimates. They are

said to be "charged on the Consolidated Fund", and are referred to as "Consolidated Fund Services". The most important of them are the management and service of the National Debt, the grants to Northern Ireland, the King's Civil List and other grants to the Royal Family, and the salaries of judges, the Comptroller and the Auditor-General, and the members of the Unemployment Assistance Board. With these we are not here concerned, since they involve no Treasury control over Estimates. The rest of the public expenditure is voted annually by means of the Appropriation Act and Consolidated Fund Acts, and the services are known as "Supply Services". The amounts required are voted by the House of Commons in Committee of Supply after consideration of the Estimates or Supplementary Estimates submitted to the House. Consideration of Treasury functions in relation to Supplementary Estimates may for the moment be postponed.

The Estimates are presented in five volumes,<sup>1</sup> dealing respectively with the Army, the Navy, the Air Force, the three Revenue Departments (the Board of Inland Revenue, the Board of Customs and Excise and the Post Office),<sup>2</sup> and the rest of the Supply Services (referred to as the "Civil Estimates"). The first three are presented by their respective ministers (or the junior minister when the heads of the departments are in the House of Lords); the last two are presented by the Financial Secretary to the Treasury. This difference does not mean that there is any substantial difference of Treasury control.<sup>3</sup> The Treasury exercises the same functions in respect of these Estimates as it exercises in respect of the Estimates which it presents. It is obvious that its control must be less effective where it is dealing with a highly technical service. If the Admiralty says that more expensive guns are necessary, the Treasury usually has not such means for denial as it would have if, for instance, the Board of Education suggested that more expensive schools were

<sup>1</sup> Actually, the Civil Estimates are presented in sections, but are paged and indexed as a single volume.

<sup>2</sup> But see the note, *ante*, p. 118.

<sup>3</sup> See 287 H.C. Deb. 5 s., 1232. Broadly speaking, while control for new services is the same, the control over detailed expenditure provided on a particular sub-head is less in the case of the Defence Departments.

required and that accordingly the Education grants should be increased.<sup>1</sup> This is a difference of efficiency, not a difference of authority.

The Estimates are submitted to the Treasury by the departments. Since they are to be discussed in Parliament before the end of the current financial year (ending on March 31st) and in the early months of the financial year for which they are prepared, they are submitted, usually, in November. They are thus framed on the basis of the previous year's experience; and, since the accounts of the previous financial year have not yet been completed and the prospects of the coming financial year are as yet unknown, they can hardly be wholly accurate.

The Treasury is not without knowledge of the trends of expenditure in the departments. As has been mentioned, its approval will have been obtained for every development which will involve a substantial increase of expenditure. In so far as the sums voted for the previous year proved to be inadequate, the departments will have submitted Supplementary Estimates to the Treasury, and these will subsequently have been submitted to the House of Commons. If there was likely to be a surplus on one item and over-expenditure on another, the consent of the Treasury to the transfer may already have been obtained, in accordance with the practice presently to be explained. Moreover, the accounts for the last full year will already have been presented and audited. In considering the Estimates for 1936-7, the Treasury will have had the complete experience of the year 1934-5. By reason of Supplementary Estimates and requests for transfers, it will have some experience of the expenditure of 1935-6. It will, finally, have given its consent to increased expenditure for 1936-7.

The pre-war procedure for the consideration of Defence Estimates has thus been explained:

The procedure, as explained to us by experienced Treasury officials, was broadly that the estimates of the previous year were taken to form a base line, and that the deviations from that line were arrived at by consultation between the Chancellor of the Exchequer and the minister at the head of the department. As a result of the consultation, the minister would know that the Chancellor of the Exchequer was prepared to

<sup>1</sup> Cf. Third Report of the Committee on National Expenditure (1922), p. 166.

budget for estimates representing a certain sum of money, and would tell his department the amount available for the following year's estimates. The essence of this system was to take the previous year's normal expenditure from which to measure departures.<sup>1</sup>

This statement is not quite exact in relation to the Civil Estimates. It has already been explained that proposals for increases of expenditure come to the Treasury before the Estimates are submitted. The fact that the total of the department's expenditure will be increased is an important factor to be considered when those proposals are first made. But approval or disapproval of increased expenditure is not left to be given when the Estimates are presented. If a new service or an expansion of an existing service is provided for the first time in the Estimates without previous consultation, the Treasury will want to know why. It will suggest that the proposal be taken out until it has been fully considered. Consequently, the increases in the Estimates are due either to automatic increases on services provided for by statute or by Treasury regulations, such as the normal increases on old age pensions, teachers' superannuation and civil service salaries, or to the creation of new services or the expansion of existing services for which Treasury approval has already been obtained.

This does not mean that approval of the Estimates is automatic. The Treasury considers the Estimates with two factors in mind. The first is that the department's estimate may be faulty. The Treasury cannot, without securing legislative authority, cut down expenditure on old age pensions. It can assert, however, that the estimates of the Board of Customs and Excise (the department concerned with the expenditure) are faulty. It can suggest that in forecasting the number of deaths among old age pensioners the Board has been too pessimistic—or, from the point of view of the pensioners, optimistic—and that the proportion of deaths is likely to be higher. In the second place, when the Chancellor of the Exchequer sees the total of the Estimates, he may be appalled at the task which faces him, and may desire the Treasury to find means for reducing the total.

<sup>1</sup> First Report of the Committee on National Expenditure (1922), p. 4.

It may well be asked whether the Treasury has the means for criticising the estimates made by the department. The department possesses the expert knowledge. The Treasury does not. In part, this observation is true. If the Admiralty asserts that the cost of moving a fleet to the Mediterranean will be so much, the Treasury has not the necessary knowledge to make a completely different estimate. The statement is not, however, wholly true. In the first place, fleets have been moved before, and the Treasury knows what they cost and has some idea whether they could not have been moved more economically. In the second place, it does not accept the *ipse dixit* of the Secretary's Department of the Admiralty. Though the cost will appear in the Estimates merely as increases in allowances, stores, etc., the Treasury requires far more information than the Admiralty proposes to put before Parliament. If the Admiralty does not spontaneously give the information, the Treasury will ask, in the legal phrase, for "further and better particulars". It must be remembered, too, that most expenditure is not brought about by abnormal conditions. The total of an item varies from year to year in a more or less regular sequence. Every item has its history and its trend of development. Expenditure on war pensions, for instance, is necessarily decreasing. The trend of that decrease and the factors which cause the decrease are almost as well known to the Treasury as to the Ministry of Pensions. Information is kept up to date. Each vote has its "blue note" which sets out the history of the vote, the changes in the vote, the cost of administration, the method of administration, and so on. This blue note is kept in type; it is altered from year to year; it is used by the Treasury when the vote comes up for consideration. Each vote thus has a pamphlet attached to it which is of some assistance in checking the departmental Estimates.

This power of control necessarily operates within narrow limits. Control over the total is more effective. Any sanction which the Treasury has given is subject to the overriding power of the Chancellor of the Exchequer to protect his budget. If he finds that the total expenditure will be excessive, he will ask for it to be cut down. If, after consulting his officials, he decides that ten million pounds must be saved, then that sum has to be apportioned among the departments.

Possibly, the Treasury may be able to indicate what new services or extensions of existing services may be postponed. The department concerned is informed to that effect. The minister will, no doubt, object. The departmental official will argue with the Treasury official; a higher departmental official will argue with a higher Treasury official; the minister will plead with the Chancellor. If necessary, the minister can appeal to the Cabinet. Alternatively, the Chancellor of the Exchequer may decide that, say, the Board of Education must reduce its estimates by £50,000. If the same process of protest and argument proves unavailing, the department must itself determine in what branch or branches of its administration the saving is to be effected.

It should be added that the Treasury is not concerned only with expenditure. It is concerned also with income. It may assert that the Board of Inland Revenue ought to have fewer bad debts, or that not enough profit is being made out of the Crown lands, or that the appropriations in aid of any other department ought to be larger.

There are, however, cases where the Treasury has no effective control. Where, for instance, a department is given control of a grant-in-aid with no obligation to surrender any unexpended balance, the Treasury in some cases finds difficulty in suggesting that the grant should be reduced.<sup>1</sup> Strictly speaking, the Treasury has no control over estimates where a Vote of Credit is sought for emergency expenditure such as the conduct of a war.<sup>2</sup> For in such a case no detailed estimates are presented to Parliament. But the Treasury can criticise the total; and the practice between 1914 and 1918 was to ask the departments to submit estimates to the Treasury, though not to Parliament.<sup>3</sup> Also, the vote is usually given to the Treasury, which can thus exercise some control over expenditure. Finally, there are cases where a department,

<sup>1</sup> See *Epitome of the Reports from the Committees of Public Accounts* (1926), pp. 390-95, 428-9; but see *Reports from the Select Committee of Public Accounts* (1929), p. vi.

<sup>2</sup> *Epitome of the Reports from the Committees of Public Accounts* (1926), pp. 93-5, 100-2, 564-7, 568-74, 575-8. See also Cd. 9031/1918. The extent of the control depends on the case and the conditions laid down. In the case of grants-in-aid to colonies and many other cases there is no difference of control.

<sup>3</sup> *Report from the Select Committee on Estimates* (1932-3), p. xii.



in the exercise of its statutory functions, undertakes services which will ultimately result in expenditure. For instance, no Treasury sanction is necessary before the Office of Works takes over ancient monuments on which expenditure will be required.<sup>1</sup>

These methods of financial control are probably now as efficient, subject to minor defects, as they could be made. In the last resort, all expenditure must depend either on policy, which is the province of the Cabinet, or on the good faith of the department concerned. The Treasury does not know, and has no means of knowing, whether expenditure on a technical service is justified or not. If the Cabinet decides that the Navy shall be as strong as the strongest fleet afloat, and the Admiralty puts forward a programme on that basis, the Treasury cannot effectively balance ship against ship and gun against gun. It is true that in 1913 the Admiralty put forward claims based upon the numbers of ships in the various fleets (comparing on the two-power standard), and the Treasury, "which was not without information from expert naval sources", replied with an estimate which was qualitative, based on speed, weight of guns, and age.<sup>2</sup> It needs little imagination to suggest that these "expert naval sources" were the opponents of the policy (and personality) of the then First Sea Lord. It is not the function of the Treasury to take sides in a contest between experts: nor, in any event, can it set up its own judgment on technical issues against that of the Board of Admiralty. In greater or less degree, this consideration affects every technical branch of government. For this reason, both Mr Gladstone and Lord Randolph Churchill admitted that the Chancellor of the Exchequer could not under the pre-war system control the details of expenditure, but could only reduce aggregate sums.<sup>3</sup>

This was the opinion, also, of Sir Michael Hicks Beach. "I have found by experience that detailed criticism by the Chancellor of the Exchequer of estimates already prepared in the departments rarely produces any result worth the labour and friction which it involves."<sup>4</sup> Nor is the method of reducing an aggregate necessarily effective. When

<sup>1</sup> Report from the Select Committee on Estimates (1932-3), p. xii.

<sup>2</sup> Lloyd George, *War Memoirs*, I, p. 9.

<sup>3</sup> Lord George Hamilton, *Parliamentary Reminiscences*, I, pp. 303-4.

<sup>4</sup> *Life of Sir Michael Hicks Beach*, II, p. 151.

Lord George Hamilton went to the Education Department, he cut down estimates as much as he could. The Treasury then reduced the aggregate by £10,000. Hamilton pointed out that he had already reduced by more than that amount, and asked for reasons. "In reply I was informed that it always had been the practice of the Treasury to cut down education estimates by £10,000, and to that rule they intended to adhere." Accordingly, he put up the estimates in the following year so as to give the Treasury the pleasure of cutting them down.<sup>1</sup> This method is effective, however, where the Treasury decides to make *pro rata* cuts in order to avoid increased taxation, or in furtherance of the Government's deliberate policy decides to economise on one group of services in order to spend more on another group. The estimates for a department then suffer an aggregate reduction and it is left to the department to determine under which sub-heads expenditure can be restricted by abolishing or reducing existing services or postponing developments.

The most effective method is the close scrutiny of all proposals involving increased expenditure. According to Sir Edward Hamilton, Permanent Secretary to the Treasury, this was the method which Hicks Beach used. "With him Treasury control was a reality. It is probably true to say that this control has never been a reality since. With him it was not interference with small detail. It was exercised at the really effective point, that is to say by a close scrutiny of any proposals to be put before Parliament which involved the expenditure of public money. His colleagues and their departments had to make a very good case for schemes necessitating a charge on the revenue."<sup>2</sup> This is the method now universally adopted.

If the Treasury and a minister cannot agree, the question must be submitted to the Prime Minister<sup>3</sup> or to the Cabinet. For instance, the Admiralty estimates for 1913 were defended in a memorandum of eighty pages. The Treasury would not agree to the great increases proposed, and the matter was submitted to the Cabinet. It formed the main and often the sole topic of conversation at fourteen full meetings

<sup>1</sup> Lord George Hamilton, *Parliamentary Reminiscences*, I, p. 304.

<sup>2</sup> *Life of Sir Michael Hicks Beach*, II, p. 178.

<sup>3</sup> E.g. Sir William Harcourt in 1886: *Life of Sir William Harcourt*, I, pp. 570-1.

of the Cabinet. Though the First Lord of the Admiralty was originally in a minority of one, the Cabinet ultimately overruled the Treasury.<sup>1</sup> It is in the Cabinet that the Chancellor of the Exchequer really exercises his influence. He can go so far as to threaten resignation. "Though he has no right to demand the concurrence of his colleagues in his view of the estimates," said Mr Gladstone, "he has a rather special right, because these do so much towards determining budget and taxation, to indicate his own views by resignation. I have repeatedly fought estimates to the extremity, with an intention of resigning in case."<sup>2</sup> Yet others, too, can fight to the last ditch. Mr Gladstone himself, as Prime Minister, resigned in 1894 because he agreed with his Chancellor that the Estimates were inflated. Lord Randolph Churchill had his bluff called in 1886. Sir William Harcourt, Sir Michael Hicks Beach and Mr Lloyd George all suffered defeat. Treasury control has no basis save the authority in Cabinet of the Chancellor of the Exchequer. If his authority is overborne the Treasury must comply.<sup>3</sup>

It should be added that the acceptance of collectivist principles by all political parties has much reduced the area of Treasury control. Most of the expenditure on social services is automatic. The principles upon which social insurance, old age pensions, unemployment insurance, and the like, are given are settled in Cabinet and by Parliament. The cost changes automatically with the size and composition of the population and the condition of trade. Treasury control is thus capable of being exercised only in relation to costs of administration.<sup>4</sup> This is true also of grant-aided services such as education, police and housing. Once the principle of the grant has been accepted the Treasury can bring little influence to bear. The difficulty is even greater where subsidies are given to industry. For here there is no control at all. The terms of subsidy are laid down in legislation. Though sometimes con-

<sup>1</sup> Churchill, *World Crisis*, I, pp. 172, 178. It has been said that the Admiralty wanted six dreadnoughts, the Treasury suggested four, and the Cabinet compromised on eight.

<sup>2</sup> *Life of Gladstone*, III, p. 365.

<sup>3</sup> Cf. evidence of Sir Warren Fisher, Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1270.

<sup>4</sup> Cf. Mr Baldwin in 1919: 116 H.C.Deb. 5 s., 481-3.

ditions are attached subject to Treasury sanction, the general principles having been approved by the Cabinet, the Treasury has little authority. What is more, it has little knowledge of the social consequences of the expenditure since it is not the expenditure of a Government Department or of a local authority under the control of a Government Department.

§ 4. *Control over Expenditure.*

The sums asked for by the Treasury and the service departments are voted by Parliament in Consolidated Fund Acts and the Appropriation Act. All these sums are appropriated to specific services by the Appropriation Act. Section 3 of that Act incorporates Schedules A and B of the Act. Schedule A sets out all the sums voted since the previous Appropriation Act. It sets out, therefore, (a) the sums voted by way of Supplementary Estimates for the expenditure of the previous year, (b) the sum voted as a Vote on Account to provide for the period of the current year between the beginning of the financial year and the passing of the Appropriation Act, and (c) the sums granted towards making good votes in supply. These sums are allocated to the specific services by Schedule B. Parts I to IV of that Schedule allocate the Supplementary Estimates of the previous year, and the rest of the Schedule allocates the total voted for the service of the current year. Accordingly, the legal authority for the various departments to spend money on their respective services is to be found in section 3 and Schedule B of the Appropriation Act.

Schedule B is based on the Estimates, but does not contain the same detail. For instance, the services provided by the Ministry of Labour are set out in Class V, Vote 8, of the Civil Estimates. The Estimates deal with that vote in three divisions. First, the total of the vote is set out; secondly, the sub-heads under which this vote will be accounted for are set out; finally, details are given of the items under each of the sub-heads. Thus, the cost of the salaries, etc., of the Minister, Secretary, etc., in 1936-7, is estimated at £9350. This is one of the details of sub-head A of Class V, Vote 8. This is a case in which almost the whole expenditure of a department falls within a single vote. It is not always

so. In particular, it is not so in the service departments. The expenditure of the War Office, for instance, falls into fifteen different votes, each of them having separate sub-heads. For instance, the cost of the Territorial Army and Reserve Forces falls under Vote 2 of the Army Estimates. The cost of the Officers' Training Corps falls under sub-head J of that vote.

The Appropriation Act sets out neither the detail of the sub-heads nor the sub-heads themselves. Parliament, accordingly, appropriates expenditure only to specific votes. It follows that it is illegal for a department to spend money beyond the amount allocated to a vote, though it is perfectly legal to transfer sums from one sub-head to another. If, for instance, the Ministry of Labour were able to save £100 on sub-head B of Class V, Vote 8 of the Civil Estimates, it would not be committing an illegal act in spending that £100 on sub-head A of the same vote. Similarly, the Army Council could spend less money on the Officers' Training Corps and more money on the Territorial Army without committing an illegal act. On the other hand, it could not without Parliamentary sanction spend less on the Territorial Army and more on the Regular Army, since these appear in separate votes.

But a transfer between sub-heads, though legal, would be a breach of faith with the House of Commons. For that House has voted the sums in the Appropriation Act after considering the details in the Estimates. Accordingly, it has been laid down by the Treasury and emphatically endorsed by the Select Committee of Public Accounts, that no such transfer can be permitted except with Treasury consent, and then only subject to specific limitations. "The good faith of government is pledged by the details of an estimate on the strength of which Parliament grants the vote."<sup>1</sup> Nor is this the only reason. For if a department receives a specific grant, there is naturally a tendency for it to spend all of it. Accordingly, if there were a specific saving on one item, it might look round to see if there was another item on which expenditure might profitably be made. In the result, therefore, the Treasury has a control over expenditure even within the legal limits.

<sup>1</sup> Epitome of the Reports from the Select Committees of Public Accounts (1926), p. 347.

Moreover, the Treasury has legal authority to authorise transfer between votes in the Navy, Army and Air Force respectively. Section 4 of the Appropriation Act provides that so long as the aggregate expenditure on naval, military and air services respectively is not made to exceed the aggregate sums appropriated for those services, any surplus arising on any vote for those services may, with the sanction of the Treasury, be applied either to making up a deficiency in appropriations in aid or in defraying expenditure in the same department which is not provided for in the sums appropriated and which "it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course". The power is in any case strictly temporary. The Treasury has to report each case to Parliament, and Parliamentary sanction in a subsequent Appropriation Act is necessary. This sanction is given by section 5 and Schedule C of the Appropriation Act.

Whether the transfer is between sub-heads or between votes, it is spoken of as a "virement". Virement is thus of two kinds, according as it is between sub-heads or between votes.<sup>1</sup> The former is the more common and, given the difficulty of forecasting expenditure four months before the beginning of the financial year, it is the only means by which the system of presenting detailed estimates to Parliament can be worked.<sup>2</sup> It is recognised that, where Parliamentary as well as Treasury control is required, the service should be provided for in a separate vote.<sup>3</sup> The Treasury does not consider that it is so bound by the Estimates that it cannot sanction a new service or a development of a service not contemplated by Parliament provided that the department keeps within its vote;<sup>4</sup> but it does so only subject to the criticisms of the Comptroller and Auditor-General and of the Select Committee of Public Accounts, and therefore exercises its power with care.<sup>5</sup> "The Treasury would not be prepared to allow an old sub-head to be exceeded or a new sub-head to be opened if they thought the expenditure

<sup>1</sup> Epitome of the Reports from the Select Committees of Public Accounts (1926), p. 90.

<sup>2</sup> *Ibid.* pp. 90, 348.

<sup>4</sup> *Ibid.* p. 350.

<sup>3</sup> *Ibid.* p. 253.

<sup>5</sup> *Ibid.* pp. 352-3.

in question either from its amount or from its nature was such that Parliament ought to have cognizance of it before it was spent", and for a large item, especially a new work, sanction in advance of Parliamentary sanction would be given "very sparingly indeed".<sup>1</sup> It insists that sanction should be obtained before the expenditure is incurred;<sup>2</sup> and it has, on occasion, withheld sanction until the matter has been considered by the Select Committee of Public Accounts.<sup>3</sup>

Virement between votes of a service department is a more serious matter<sup>4</sup> and its desirability has frequently been discussed.<sup>5</sup> It is usually exercised in cases where the excess is not deliberate, as for instance where it is due to expenditure by outlying spending departments whose total is not known until the accounts come in.<sup>6</sup> In wartime, if detailed estimates are not replaced by votes of credit, it is more often used.<sup>7</sup> The application for sanction must be in writing and must give reasons.<sup>8</sup> Where the over-expenditure is deliberate, sanction must be applied for before it is incurred;<sup>9</sup> and where it is automatic, sanction must be sought as soon as the excess is known.<sup>10</sup> There must in either case be urgent necessity for the expenditure.<sup>11</sup>

Since this kind of virement requires subsequent Parliamentary approval, statements are attached to the Appropriation Accounts, a resolution is passed in Committee, and sanction is given by the next Appropriation Act. In addition, the Select Committee of Public Accounts gives consideration to the material attached to the Appropriation Accounts and the reports of the Comptroller and Auditor-General thereon. It may ask the department, the Treasury, and the Comptroller and Auditor-General to give further explanations and will report to the House of Commons if it is not satisfied.

It has been mentioned above<sup>12</sup> that, in addition to the sub-heads, the details of expenditure under those sub-heads are given in the Estimates.

<sup>1</sup> Epitome of the Reports from the Committees of Public Accounts (1926), p. 261.

<sup>2</sup> *Ibid.* pp. 65, 622, 640.

<sup>4</sup> For the history of this power, see *ibid.* pp. 10-11.

<sup>5</sup> *Ibid.* pp. 13-15, 89, 252, etc.

<sup>7</sup> *Ibid.* p. 460. See the figures for 1892-1902.

<sup>9</sup> *Ibid.* pp. 17, 54, 89-90, 226-7.

<sup>11</sup> *Ibid.* pp. 224, 328-9, 487-8.

<sup>3</sup> *Ibid.* pp. 77-8, 556.

<sup>6</sup> *Ibid.* p. 91.

<sup>8</sup> *Ibid.* pp. 14, 224-5, 227.

<sup>10</sup> *Ibid.* pp. 14, 91.

<sup>12</sup> *Ante*, p. 131.

It is considered, however, that the department is not bound as closely by these details as it is by the sub-heads. Consequently, the Treasury does not control in detail the expenditure of a department within a sub-head. As it explained in 1868:

It appears to my Lords that it would be beyond the functions of this Board to control the ordinary expenditure placed under the charge of the several departments, within the limits of the sums set forth under the sub-heads of the several grants of Parliament, and that it is only in exceptional cases that the special sanction of the Treasury should be held to be necessary. My Lords consider that such sanction should be required for any increase of establishment, of salary, or of cost of a service, or for any additional works or new services which have not been specifically provided for in the grants of Parliament.<sup>1</sup>

In fact, however, the exceptions cover much of the detail set out in the Estimates. This is particularly true of the Civil Estimates, where most of the detail is concerned with the number of the establishment and the salaries paid to it. These are necessarily under the control of the Treasury on account of the general civil service control mentioned at the beginning of this chapter.

Any expenditure beyond the limits of a vote or, in the cases of the service departments the total of its votes, is illegal, and the department has to seek express Parliamentary approval. It is one of the Treasury's duties to see that illegal expenditure is not incurred, though its functions in this connection are not so important as those of the Comptroller and Auditor-General, and the Select Committee of Public Accounts. The King by royal order places the total Parliamentary grant at the disposal of the Treasury.<sup>2</sup> The departments obtain their funds from the Paymaster-General (the Revenue departments excepted, since they defray their expenses in the first instance out of the revenues which they collect), and, so far as he has no adequate balance from other sources, he applies to the Treasury from day to day for issues from the Consolidated Fund. The Treasury and the Comptroller and Auditor-General authorise issues from the Consolidated Fund Account at the Bank of England.<sup>3</sup>

<sup>1</sup> Epitome of the Reports from the Committees of Public Accounts (1926), pp. 20-21.

<sup>2</sup> *Ibid.* p. 348.

<sup>3</sup> *Ibid.* pp. 175-6.



An adjustment of accounts of a general character takes place monthly, a fairly accurate adjustment takes place at the end of each quarter, and at the close of the financial year all possible precautions are taken to make issues from the Consolidated Fund correspond with what will be the final audited expenditure of the year. These issues are taken by the Chancellor of the Exchequer in his budget speech to be the "expenditure" of the previous year: it is, however, only an approximation, since the actual expenditure will not be known until the Appropriation Accounts have been made up and audited.<sup>1</sup>

In each department there is an "accounting officer", being either the permanent head of the department or the chief financial officer, who is appointed by the Treasury, and is responsible through the minister, to Parliament, for departmental expenditure.<sup>2</sup> He is personally and pecuniarily liable for irregular or unauthorised expenditure unless he has made a written protest to and received authority from the minister;<sup>3</sup> and even when he is overruled he can communicate his protest to the Treasury and the Comptroller and Auditor-General.<sup>4</sup> When he finally produces his Appropriation Account he will be made to answer to the Treasury, the Comptroller and Auditor-General, and the Select Committee of Public Accounts, for any kind of irregularity.

If the department finds that it will exceed its appropriation and virement is not possible or, in the opinion of the Treasury, undesirable, a Supplementary Estimate will become necessary. The responsibility for making such proposals rests with the Treasury. Accordingly, the Treasury insists that when departments consider that a Supplementary Vote is necessary, and in all cases of doubt, a full statement of the condition of the votes shall be submitted.<sup>5</sup> It exercises the same powers of scrutiny over Supplementary Estimates as it exercises over Estimates, and with the knowledge that an increase of expenditure may show a deficit on the year's working owing to revenue being so arranged as to

<sup>1</sup> Epitome of the Reports from the Committees of Public Accounts (1926), pp. 176-7.

<sup>2</sup> See *ibid.* pp. 610-20, 686.

<sup>3</sup> *Ibid.* pp. 28, 30-32, 46-7, 68-9, 199, 605-11.

<sup>4</sup> *Ibid.* p. 635.

<sup>5</sup> Epitome of the Reports from the Committees of Public Accounts (1926), p. 65.

meet only the Estimates and the Consolidated Fund Services, and that Parliament regards Supplementary Estimates with suspicion. The Select Committee of Public Accounts has laid down the rule that the practice of Estimates should be followed for Supplementary Estimates. Consequently, provision should be made under every sub-head under which there is an anticipated deficit, whether it is covered or not by savings on other sub-heads, unless the amount is trivial and the subject appears to be contentious.<sup>1</sup> This rule was, however, laid down primarily to permit of full debate in Parliament and not for financial reasons.

If the excess is discovered too late for a Supplementary Estimate, an excess vote, incorporated in the Appropriation Act, will be required. The Treasury has under its control a Civil Contingencies Fund out of which payments can be made. But the amount of the advance must be repaid to the Fund, and in any case Parliamentary sanction to the excess is legally necessary. Excesses are scrutinised by the Select Committee of Public Accounts, and Parliamentary sanction is not regarded as a mere formality.<sup>2</sup>

#### § 5. *The Results of Financial Control.*

The sum of these various legal and customary requirements is that the Treasury has control, subject to the Cabinet, of the financial aspects of departmental proposals and of the accounting systems of the departments, and is one of the chief instruments by which departmental expenditure is kept not only within the law, but, subject to virement, within the Estimates. The powers and their exercise give the Treasury a preponderance which the Finance Department of any economical system of government must necessarily provide. In so far as it is ineffective, its failure is due not to defects in the system but to the necessary consequences of that division of labour which requires that one authority shall raise money and other authorities spend it. It has been said that Treasury control involves too much accounting and too little control; but the survey above—necessarily elementary though it is—

<sup>1</sup> Reports from the Select Committee of Public Accounts (1933), pp. vi–vii.

<sup>2</sup> *Ibid.* pp. 123–4.

indicates that it is largely through accounting that control is exercised. It has also been said that boards of directors allow their managers to spend money subject only to audit. Even if this be so, there is an obvious difference between a board of directors and the Cabinet. The directors' measure of efficiency is the percentage of profit. In no part of government—not even in the Post Office—can there be any such test.

On the whole, experience seems to show that the interests of the taxpayer cannot be left to the spending departments; that those interests require the careful consideration of each item of public expenditure in its relation to other items and to the available resources of the State, as well as the vigilant supervision of some authority not directly concerned in the expenditure itself; and that such supervision can be most naturally and effectively exercised by the department which is responsible for raising the revenue required.<sup>1</sup>

But Treasury control is not merely not a fifth wheel in the coach; it is not a wheel at all. It rests only on the authority which the Chancellor of the Exchequer wields in the Cabinet. He himself discusses with other ministers the more important questions at issue: and if it is convenient to speak of "the Treasury" and if it frequently happens that questions are discussed between and decided by officials, the reason is only that the Chancellor cannot do everything and that delegation is the art of government. Treasury control is nothing more than the Chancellor's control of finance. He himself and, through him, his officials, are subject to the Cabinet. He and they advise the Cabinet on the financial implications of a policy; but the Cabinet decides.

<sup>1</sup> Report of the Royal Commission on the Civil Service (1929), Minutes of Evidence, p. 1270.

## CHAPTER VIII

# The Prime Minister

### § 1. *The Prime Minister's Position.*

"The Prime Minister", said Mr John Morley in 1889, "is the keystone of the Cabinet arch."<sup>1</sup> If that were all, it would be necessary first to examine the working of the Cabinet, and then to consider the functions of its *ex officio* chairman. But the Cabinet arch is a part only of a vast constitutional structure. It is, undoubtedly, the most important part. The Cabinet is the final arbiter of policy. It is in the Cabinet that the Prime Minister's pre-eminence is most obvious. Yet his position as head of the Administration is so important that it must first be considered.

According to Lord Rosebery, Sir Robert Peel was "the model of all Prime Ministers".<sup>2</sup>

It is more than doubtful (he added) if it be possible in this generation, when the burdens of empire and of office have so incalculably grown, for any Prime Minister to discharge the duties of his high post with the same thoroughness or in the same spirit as Peel. To do so would demand more time and strength than any man has at his command. For Peel kept a strict supervision over every department: he seems to have been master of the business of each and all of them. He was conversant with all departmental questions, and formed and enforced opinions on them. And, though he had an able Chancellor of the Exchequer, in whom he had full confidence, he himself introduced the great Budget of 1842 and that of 1845. The War Office, the Admiralty, the Foreign Office, the administration of India and of Ireland felt his personal influence as much as the Treasury or the Board of Trade.<sup>3</sup>

The emphasis of this passage is fully justified by the documents printed in the *Peel Papers*. Yet Peel's pre-eminence was exceptional; and none of his successors, not even Mr Disraeli and Mr Gladstone,

<sup>1</sup> Morley, *Walpole*, p. 157.

<sup>2</sup> Rosebery, *Miscellanies*, I, p. 197.

<sup>3</sup> *Ibid.*

attained to the same measure of control. One element in his predominance, as Lord Rosebery suggested, was the narrow range of administrative activity. The State had not, in 1846, entered upon that interference in social and economic life that the industrial revolution had made necessary. The finance of government was comparatively simple. The practical administration of the Army was primarily in the hands of the Commander-in-Chief, not in those of the Secretary of State. The Navy was, by modern standards, a small affair. Foreign and Colonial policy involved a leisurely consideration of despatches, not a feverish interchange of telegraphic messages. The "man on the spot" in the colonies was a local dictator. India was governed primarily by the local agents of the East India Company. Even the government of Ireland was, in the main, a matter of police. Above all, Peel's personality impressed itself upon his colleagues. His Cabinet contained some able members. Sir James Graham's qualities as a politician were, perhaps, not attractive; his capacity as an administrator could not be denied. Lord Aberdeen as Foreign Secretary might be accused of pro-French bias, and his relations with *The Times* are not to be defended; yet his appointment to office smoothed all the feathers that Lord Palmerston had ruffled. The Duke of Wellington, in spite of the broken windows of 1832, held an unassailable position in public esteem. When Mr Gladstone was moved into the Cabinet his capacity was already evident. In spite of all this, Peel dominated his Cabinet. The "principles of Sir Robert Peel" were an important element in policy long after his death. For Mr Gladstone he remained the oracle of the Constitution.

Peel's own views as to a Prime Minister's functions were put by him to a Select Committee in 1850.

You must presume that he reads every important despatch from every Foreign Court. He cannot consult with the Secretary of State for Foreign Affairs and exercise the influence which he ought to have with respect to foreign affairs, unless he be master of everything of importance passing in that department. It is the same with respect to India. . . . In the case of Ireland and the Home Department it is the same. Then the Prime Minister has the patronage of the Crown to exercise. . . ; he has to make inquiries into the qualifications of persons who are candidates; he has to conduct the whole of the communications with the Sovereign; he

has to write... the letters in reply to all persons of station who address themselves to him; he has to receive deputations on public business; during the sitting of Parliament he is expected to attend six or seven hours a day, while Parliament is sitting, for five or six days a week; at least, he is blamed if he is absent.<sup>1</sup>

Mr Gladstone's explanation differs but slightly.

The Head of the British Government is not a Grand Vizier. He has no powers, properly so-called, over his colleagues: on the rare occasions when a Cabinet determines its course by the votes of its members, his vote counts only as one of theirs. But they are appointed and dismissed by the Sovereign on his advice. In a perfectly organised administration, such for example as was that of Sir Robert Peel in 1841-6, nothing of great importance is matured, or would even be projected, in any department without his personal cognisance; and any weighty business would commonly go to him before being submitted to the Cabinet. He reports to the Sovereign its proceedings, and he also has many audiences of the august occupant of the Throne.<sup>2</sup>

Lord Morley's account is said to have been the work of Mr Gladstone.<sup>3</sup> "Although in Cabinet all its members stand on an equal footing, speak with equal voice, and, on the rare occasions when a division is taken, are counted on the fraternal principle of one man one vote, yet the head of the Cabinet is *primus inter pares*, and occupies a position which, so long as it lasts, is one of exceptional and peculiar authority."<sup>4</sup> He then points out that, though the monarch chooses the Prime Minister, "the Crown could hardly exercise any real power either of selection or exclusion against the marked wishes of the constituencies",<sup>5</sup> and that, though his colleagues are in some cases designated to him by public opinion and parliamentary position, and the predilections of the Sovereign have some influence, "there is more than a margin for his free exercise of choice in the persons admitted to his Cabinet, and in all cases it is for him alone to settle the distribution of posts".<sup>6</sup>

<sup>1</sup> Report from the Select Committee on Official Salaries (1850), pp. 40-41.

<sup>2</sup> Gladstone, *Gleanings*, I, pp. 242-3.

<sup>3</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 183.

<sup>4</sup> Morley, *Walpole*, p. 157.

<sup>5</sup> *Ibid.*; see *ante*, Chapter II.

<sup>6</sup> *Ibid.* p. 158; see *ante*, Chapter III.

Lord Morley continued:

The flexibility of the Cabinet system allows the Prime Minister to take upon himself a power not inferior to that of a dictator, provided always that the House of Commons will stand by him. In ordinary circumstances he leaves the heads of departments to do their work in their own way. It is their duty freely and voluntarily to call him into council, on business of a certain order of importance. With the Foreign Secretary alone he is in close and continuous communication as to the business of his office. Foreign affairs must always be the matter of continuous thought in the mind of the Prime Minister. They are not continuously before the Cabinet; it has not therefore the same fulness of information as the Prime Minister; and consequently in this important department of public action, the Cabinet must for the most part, unless there be some special cause of excitement, depend upon the prudence and watchfulness of its head.<sup>1</sup>

Lord Morley added that the Prime Minister settled differences between departments,<sup>2</sup> that he could, with the Sovereign's assent, call for a colleague's resignation, and that he was consulted on the appointment of all the highest posts in the service of the Crown.

Sir William Harcourt thought that Lord Morley's estimate of the powers of the Prime Minister was exaggerated. He agreed that "though theoretically he is *primus inter pares*, he should in reality be *inter stellas luna minores*".<sup>3</sup> But he said that "in practice the thing depends very much upon the character of the man".<sup>4</sup> Lord Oxford and Asquith said the same: "the office of Prime Minister is what its holder chooses to make it".<sup>5</sup>

Personality undoubtedly plays a great part in determining the power of a Prime Minister. Peel's predominance has already been mentioned. Sir James Graham said of him: "We never had a Minister who was so truly a first Minister as he is. He makes himself felt in every department, and is really cognisant of the affairs of each. Lord Grey could not master such an amount of business. Canning could not do it. Now he is an actual Minister, and is indeed, *capax imperii*."<sup>6</sup> It may be added that

<sup>1</sup> Morley, *Walpole*, p. 158.

<sup>2</sup> See *ante*, Chapter VI.

<sup>3</sup> *Life of Sir William Harcourt*, II, p. 612.

<sup>4</sup> *Ibid.* p. 610.

<sup>5</sup> *Fifty Years of Parliament*, II, p. 185.

<sup>6</sup> *Life of Gladstone*, I, p. 248.

neither Lord Melbourne nor Lord John Russell obtained such a supremacy. Lord Melbourne was too lazy and Lord John Russell too impetuous. Each of them, too, had in Lord Palmerston a leading subordinate whose exuberance could not be controlled. For the influence of personality rests not merely on the force of character of its possessor, but also on the force of character of those with whom he is in relation. Palmerston himself, according to Mr Gladstone, was a weak Prime Minister. "He said that in Peel's Cabinet, a Cabinet minister if he had a measure to bring forward consulted Peel and then the Cabinet. Nobody thought of consulting Palmerston first, but brought his measure at once to the Cabinet."<sup>1</sup> This statement must be taken with some reserve, because it was made after Gladstone's conflict with Palmerston over the budget of 1860. Palmerston told the Queen that if the Lords destroyed the Paper Duties Bill "they would perform a good public service".<sup>2</sup> It is, nevertheless, instructive to compare the budget of 1841 with that of 1860. The proposal to impose the income tax and to relax some of the import duties came from Peel. It was worked out in a series of communications between Peel and his ministers, and the resources of the several departments were utilised. The budget of 1860, which completed the work of the budget of 1841 and the Corn Laws Bill of 1846, was drawn up by Mr Gladstone alone and was carried through the Cabinet in spite of the Prime Minister's strenuous opposition. It must again be remembered, however, that the difference was at least as much the consequence of the difference between Goulbourn and Gladstone as of the difference between Peel and Palmerston.

Of Disraeli, there are different views. Lord Salisbury was a hostile witness, but his evidence is important.

As the head of a Cabinet his fault was want of firmness. The chiefs of departments got their own way too much. The Cabinet as a whole got it too little, and this necessarily followed from having at the head of affairs a statesman whose only final political principle was that the Party must on no account be broken up, and who shrank therefore from exercising coercion on any of his subordinates. Thus it became possible that the Transvaal should be annexed—not indeed against the wish of

<sup>1</sup> *Life of Gladstone*, II, p. 35.

<sup>2</sup> *Life of the Prince Consort*, V, p. 100.



the Cabinet, but actually without its knowledge. Lord Carnarvon wished to do it. Lord Beaconsfield was persuaded that it was an excellent thing to do; i.e., the responsible head of the Department told him, and he believed, that it was an excellent thing to do, and it was done. Again, Bartle Frere should have been recalled.... So thought the majority of the Cabinet, so thought Dizzy himself. But the Queen was strongly opposed to it, and Hicks Beach was strongly opposed to it; and the Prime Minister was unable to resist his Sovereign and the Colonial Secretary together. Again, it was decided in Cabinet the invasion of Afghanistan should take place through one Pass. Lytton objected. Because Lytton did, Hardy. Because Hardy did, Dizzy did; for was not Hardy at the head of the India Office? And so the plans were altered.<sup>1</sup>

It would seem that the examples do not support the generalisation. Disraeli certainly did not keep in touch with the affairs of each department, as Peel had done. No Prime Minister since Peel has been able to do so. <He was therefore disposed to support the view of the head of a department against the combined wisdom of his colleagues> So great was his influence that he was able to support Lord Carnarvon, Hicks Beach and Gathorne-Hardy against the rest of the Cabinet. In respect of Bartle Frere, Hicks Beach himself regarded Lord Beaconsfield's action as indicating strength, not weakness.<sup>2</sup>

Hicks Beach, indeed, contrasted Lord Salisbury and Lord Beaconsfield.

As Prime Minister [Lord Salisbury] did not exercise the control over his colleagues, either in or out of the Cabinet, that Lord Beaconsfield did. I have known Lord Beaconsfield enforce his view on the Cabinet after all its members but one had expressed a different opinion;<sup>3</sup> Lord Salisbury frequently allowed important matters to be decided by a small majority of votes, even against his own opinion. Lord Beaconsfield kept a very watchful eye on the proceedings of all his colleagues. When I was Irish Secretary in 1874, the *Daily News* had an article charging me with a new departure in Irish Education. On the next morning a letter came to Dublin from Mr Disraeli asking me for an explanation. Lord

<sup>1</sup> Balfour, *Chapters of Autobiography*, pp. 113-14.

<sup>2</sup> *Life of Sir Michael Hicks Beach*, I, p. 130.

<sup>3</sup> This refers apparently to 1879, when Lord Beaconsfield supported Hicks Beach over the proposal to recall Bartle Frere.

Salisbury left his colleagues very much to themselves, unless they consulted him.<sup>1</sup>

That Disraeli could, if necessary, support his colleagues against the head of a department is shown conclusively by Lord Derby's tenure of the Foreign Office at the period of the Russo-Turkish War. Before his resignation in 1878 Lord Derby was opposed to the Government's "forward" policy, and Lord Beaconsfield was, for practical purposes, his own Foreign Secretary.<sup>2</sup> In truth, the policy was the Prime Minister's. He persuaded the Cabinet to agree, and he overruled his own Foreign Secretary. Whatever be thought of the policy and of its execution, it must be agreed that the method bears no trace of weakness.

Apart from his Palmerstonian beliefs in force and prestige, supported as they were by an almost childish delight in the colour of the Orient, Disraeli had no real policy and no desire to form one.<sup>3</sup> He was an arbiter, a strong judge, who, as Mr Dooley said of the judges of the Supreme Court of the United States, kept his eye on the election returns. Lord Salisbury had a foreign policy, but nothing else, and did not watch public opinion. Both differed in this respect from Mr Gladstone. He, too, interfered little in ordinary administration after 1880, and was not much concerned with foreign policy (as the Gordon episode shows). Like Disraeli, he kept his ear to the ground. But, unlike Disraeli, he considered that "heroic" measures were necessary to rally his party and to give it a majority. He therefore followed Peel's practice of initiating such measures and working them out in detail. The Irish Church Bill and the two Home Rule Bills, above all, bore the impress of his personality. While these measures were on the anvil, sparks might fly in other directions almost without his noticing them. Neither Disraeli nor Lord Salisbury was a legislator. It is true that, according to his biographer, "there are among [Lord Salisbury's] papers initialled memoranda dealing with Bills under discussion; draft clauses in his handwriting; suggestions for legislation which he is

<sup>1</sup> *Life of Sir Michael Hicks Beach*, II, pp. 360-61.

<sup>2</sup> *Life of Disraeli*, II, pp. 997 *et seq.*

<sup>3</sup> I do not forget "*sanitas sanitas, omnia sanitas*": the origin of the fantastic belief of the Primrose League that Disraeli was a great social reformer is set out in the *Life of Lord Norton*.

circulating for his colleagues' opinion".<sup>1</sup> But there is no evidence that either he or Disraeli actually initiated legislation.<sup>2</sup> Moreover, Lord Salisbury did not regard it as his duty to supervise the work of his colleagues.<sup>3</sup>

Mr Gladstone's practice in respect of administration was much the same. In 1868-74, it is true, he attempted to follow Peel's example.<sup>4</sup> But he gave up the attempt in his later periods of office. His control over his Cabinet was, however, considerable. Between 1868 and 1874 his power was almost absolute. The forceful ambition of Mr Chamberlain and the gradual realisation of the Whigs that Liberalism and Radicalism were becoming almost synonymous converted his function into one of conciliation and arbitration. The purge caused by the acceptance of the principle of Home Rule would, no doubt, have restored his hegemony. But by the time he returned to power in 1892 new fissures had opened in the Liberal landscape, and only the "Grand Old Man" prevented disruption. These fissures widened while Lord Rosebery was Prime Minister. The opposition between the "Imperialist" and the "Little England" sections of the Liberal Party became acute. The leader of the one was Prime Minister, the leader of the other the leader of the House of Commons. Rosebery, too, was concerned primarily with foreign affairs. The conditions did not enable him to control his Cabinet.

Mr Balfour accepted a *damnosa hereditas*. His primary task was to prevent the question of tariff reform from creating an open rupture. But, after 1903, the resignations of so many of those who had led the Unionists in the earlier period of their hegemony left him with a comparatively young and inexperienced body of ministers. His predominance was then undoubted. His skill as chairman was immense. He was able to draw out the elements of agreement. His intellectual capacity enabled him, not to control ministers in their departmental work, but to give them valuable assistance whenever they consulted

<sup>1</sup> *Life of Robert, Marquis of Salisbury*, III, p. 167.

<sup>2</sup> *Ibid.* III, p. 168.

<sup>3</sup> *Ibid.* III, p. 169.

<sup>4</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 185, footnote.

him. He was, therefore, consulted frequently. This is, after all, the most that a Prime Minister can do, and there is a large measure of agreement that, with the possible exception of Mr Lloyd George, Mr Balfour was the ablest Prime Minister of the present century.

According to Lord Esher—who was prejudiced—Sir Henry Campbell-Bannerman had no effective control, and the work of the departments was carried on practically without reference to the Prime Minister.<sup>1</sup> In truth, his health did not permit him to accept Peel's task, even if more modern conditions prevented it. His primary purpose was to prevent the "Pro-Boers" and the Liberal Imperialists from seizing each other's throats. In this he was largely successful. But he could not, at the same time, intervene in departmental matters. His sound judgment was available to any minister who sought it, and it may be assumed that his comparatively inexperienced team of ministers took advantage of it.

Mr Asquith not only had no taste for interference in administration, but also believed that it was impracticable.<sup>2</sup> As chairman of the Cabinet, it is generally agreed—and not merely by Mr Lloyd George—that in his later years of office he had no real control. This was particularly true after 1915, when the burden of the war and above all the personal loss which he suffered caused him to lose interest. His Coalition Government was necessarily both large and influential, since it contained the most important and experienced Conservative leaders as well as his own political subordinates, some of whom had had nine years' continuous experience of office. It is said that, when a discussion in which he was not interested was proceeding, he would proceed to write letters until the discussion appeared to have worn itself out. He would then remark, "Well, gentlemen, as we are now agreed, shall we pass on?" Whereupon it would be asked on what they were agreed, and a new discussion would arise over this question. On occasions, indeed, there would be a discussion at each end of the table, Mr Asquith imperturbably writing his letters in the middle. This weakness was the ostensible reason for the intrigue by which he was ousted in 1916; but it is unlikely that the

<sup>1</sup> *Esher Papers*, II, pp. 160-61.

<sup>2</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 186.

Conservative ministers would have assented to Mr Lloyd George's leadership if there were no substance in the complaint.

The problems which faced Mr Lloyd George's Government were of a peculiar nature, and the institution of the War Cabinet necessarily modified ordinary methods of government. It is admitted even by his opponents that he was quick to seize the point of a difficulty, especially if it were put to him orally. (The common statement that Mr Lloyd George never read anything is untrue, but it is certain that he preferred to have the points put to him shortly and succinctly by word of mouth.) In the Cabinet he was in complete control, bringing out the elements of agreement in competing proposals and, naturally, emphasising those with which he himself agreed. More than any recent Prime Minister he intervened in departmental business. After 1918 he reduced his Foreign Secretary almost to the position of an Under-Secretary. His private secretariat in the "Garden Suburb" was almost a second Foreign Office. He himself saw foreign ambassadors, sometimes without notifying the real Foreign Office. The practice of the War Cabinet was carried on under the revived Cabinet system of 1919-22. Mr Bonar Law, by revulsion, was tempted to alter conditions too much. He proposed, for instance, to abolish the Cabinet Office, though was ultimately dissuaded from carrying out his proposal.

Of the more recent Prime Ministers it is less easy to judge. There are few, if any, published documents. The common understanding of a minister's methods of operation is necessarily derived from a process of filtration which, possibly, leaves all the truth behind. But, if that common understanding be correct, nothing could be more opposed than the methods adopted by Mr MacDonald and Mr Baldwin respectively. The one was anxious, it is said, to read every document and master every detail. The other is reputed to believe that he is concerned only with major questions of policy, that documents ought to state these points shortly and succinctly, and that they ought not to be submitted at all unless they are of the Cabinet order of importance. It is said, further, that the natural isolation of Mr MacDonald's mind prevented him from maintaining touch with his ministers. He therefore allowed ministers, other than the Foreign Secretary, to go their own way. Mr Baldwin, on

the other hand, is constantly accessible. It is a common practice for ministers to visit Downing Street for a short conversation. At the same time, it appears that the Prime Minister does not intervene unless his assistance is requested, and that he dislikes taking decisions on departmental questions outside the Cabinet. These views must be accepted with reserve. But, if they contain an atom of truth, they show that the office of Prime Minister is very largely what the holder makes it.

Though personality plays its part in determining the exercise of a Prime Minister's powers, the model which Peel created can no longer be followed. Departments have multiplied and, internally, have grown enormously. The vast group of the social services and the emphasis upon economic problems are new. In Peel's day, government consisted in the control of external policy of the armed forces and of internal order. The problem of Ireland has, it is true, been transferred to other hands and it now affects the British Government only as a matter of external policy.<sup>1</sup> But external policy now covers a much greater variety of subjects. There are three armed forces in place of two; they are under the immediate control of the Cabinet; they are considerably stronger; and they have to prepare not for a possible conflict of professional forces, but for the eventuality of a vast European conflagration in which whole nations, including our own, may be engaged. By the side of the Home Office now stand the Ministries of Labour, Health, Agriculture and Transport, and the Board of Education. With the industrialisation of Europe and the increase of international trade, the functions of the Board of Trade have multiplied. All these changes, coupled with the creation of a swollen National Debt, have caused the work of the Treasury to burst its former narrow confines.

As Lord Rosebery said: "A Prime Minister who is the senior partner in every department as well as president of the whole, who aspires and vibrates through every part, is almost, if not quite, an impossibility. A First Minister is the most that can be hoped for, the Chairman and, on most occasions, the spokesman of that Board of Directors which is

<sup>1</sup> Even so, it remains with us. The present Cabinet has had a Committee on Ireland in "suspended animation" for several years.

called the Cabinet; who has the initiation and guidance of large courses of public policy; but who does not, unless specifically invoked, interfere departmentally."<sup>1</sup> Lord Oxford and Asquith not only quoted this statement with approval, but added: "No Prime Minister could find time or energy for such a departmental autocracy as Peel appears to have exercised. Lord Palmerston's authority in his Cabinet (though he was to the last one of the most industrious of men) was maintained by widely different faculties and methods."<sup>2</sup> Peel himself, it should be added, had arrived at the same conclusion by the end of his last Government.<sup>3</sup> Peel, too, never had to look after a popular constituency. As Disraeli said in his remarkable character sketch: "Although forty years in Parliament, it is remarkable that Sir Robert Peel never represented a popular constituency or stood a contested election."<sup>4</sup>

Nevertheless, the Prime Minister's actual authority has tended to increase. He is not merely *primus inter pares*. He is not even, as Harcourt said, *inter stellas luna minores*. He is, rather, a sun around which planets revolve. Though he may rise to office because of the King's choice or the election of his Parliamentary colleagues, he owes his majority to the choice of the electorate. Generally, a party obtains office because of a general election. A general election is, primarily, an election of a Prime Minister. The wavering voters who decide elections support neither a party nor a policy, they support a leader. Peel, with unusual prescience, realised in 1834 that this was an inevitable consequence of the first Reform Act. His famous Tamworth Manifesto was, technically, his address to the electors of Tamworth. It was, in substance, an appeal to the people. It failed in 1834, but it succeeded in 1841. Croker said that the election of 1841 was the first that was fought on the principle of voting for a Prime Minister.<sup>5</sup> It was, in fact, a contest between the Queen and Lord Melbourne on the one hand, and Sir Robert Peel on the other.

<sup>1</sup> Quoted by Lord Oxford and Asquith, *Fifty Years of Parliament*, II, pp. 185-6.

<sup>2</sup> *Ibid.* II, p. 186.

<sup>3</sup> See a letter to Mr Arbuthnot in 1845 (*Peel Papers*, III, p. 219) and a conversation with Mr Gladstone in 1846 (*Life of Gladstone*, I, pp. 298-300).

<sup>4</sup> Disraeli, *Lord George Bentinck*, p. 225.

<sup>5</sup> *Peel Papers*, II, p. 475.

With the passage of the years, the fact became more obvious. Gladstone said of the election of 1857 that "it was not an election like that of 1784, when Pitt appealed to the question whether the Crown should be the slave of an oligarchic faction, nor like that of 1831, when Grey sought a judgment on reform, nor like that of 1852, when the issue was the expiring controversy of protection. The country was to decide not upon the Canton river, but whether it would or would not have Palmerston for Prime Minister".<sup>1</sup> The election of 1859 was again a contest between statesmen, between "those terrible old men" (to use the Queen's words), Lord Palmerston and Lord John Russell, on the one hand, and Lord Derby and Mr Disraeli on the other.<sup>2</sup> Palmerston went to the country in 1865, it was said, with the cry of "Palmerston and no Politics" or "Palmerston and no Principles".<sup>3</sup>

With the death or retirement of the old men, elections became a personal contest between Gladstone and Disraeli. Even Lord Russell noted the change, and the Duke of Bedford observed that neither of them was fit for government.<sup>4</sup> Disraeli in 1868 realised that his election address was a manifesto to the nation, and secured Hardy's approval of it.<sup>5</sup> Gladstone in 1874 justified his announcing a new policy in his election address by referring to the Tamworth Manifesto, and secured the Cabinet's approval of large portions of it.<sup>6</sup> In 1880 he was no longer leader. But the Midlothian campaign was an onslaught on Lord Beaconsfield, and the question which electors asked themselves was whether they wished to be governed by Lord Beaconsfield or by Mr Gladstone. Lord Beaconsfield had appealed to them through his election address. Mr Gladstone replied in his election address and from numerous platforms.<sup>7</sup> Mr Gladstone was preferred and became Prime Minister by choice of the people.<sup>8</sup>

It was a necessary consequence that the Prime Minister should tour the country, setting forth his policy, and asking the electors to support

<sup>1</sup> *Life of Gladstone*, I, p. 564.

<sup>2</sup> *Ibid.* I, p. 622.

<sup>3</sup> *Life of the Duke of Devonshire*, I, p. 61.

<sup>4</sup> *Life of Gladstone*, II, p. 229.

<sup>5</sup> *Life of Gathorne-Hardy*, I, p. 282.

<sup>6</sup> Guedalla, *The Queen and Mr Gladstone*, I, p. 442; *Life of Gladstone*, II, pp. 485-7.

<sup>7</sup> *Life of Gladstone*, II, pp. 605-6 and 618.

<sup>8</sup> *Ante*, Chapter II, p. 24.



his candidates. The Queen, as might be expected, objected to the innovation, and reproved Mr Gladstone in 1886 for speaking outside his constituency, especially at the railway stations.<sup>1</sup> Mr Gladstone replied that he could willingly do without it: but since 1880 the leaders of the Opposition "have established a rule of what may be called popular agitation by addressing public meetings from time to time at places with which they were not connected. This method was peculiarly marked in the case of Lord Salisbury, as a peer, and this change on the part of the leader of the Opposition has induced Mr Gladstone to deviate on this critical occasion from the rule which he had (he believes) generally or uniformly observed in former years".<sup>2</sup> Mr Gladstone's accusation was literally correct. But, in substance, the "pilgrimages of passion" began with his own Midlothian campaign in 1880.

To-day, it is not only part of the Prime Minister's duty to his party to set out his policy in his election manifesto and to speak to vast concourses at party meetings; it is his duty, also, to send a letter in support of his candidate at every by-election and, at a general election, to speak to the electorate through the broadcasting system. An election contest is an appeal by the party leaders to the electorate. They ask the electors to support their policies; and, having done so successfully, they have a "mandate" to give effect to their proposals and a duty to keep their promises. Sometimes, indeed, they make no proposals. In 1931 Mr MacDonald appealed for a "doctor's mandate" to do what might be necessary for financial restoration and the preservation of the country. In consequence, he was able to create a protectionist system which, till then, had always been rejected by the electors.<sup>3</sup>

The result, necessarily, is to strengthen the hands of the Prime Minister against his colleagues in the Government and in Parliament. Since he has so much personal support, he is perhaps essential, and certainly useful, to the Government. As such, he is able, within limits,

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 149.

<sup>2</sup> *Ibid.* 3rd Series, I, pp. 149-50.

<sup>3</sup> It is sufficiently obvious that Mr Baldwin's personality played a large part in the election of 1935. It is thought by some that the resignation of Mr Ramsay MacDonald in June, 1935, was arranged to that end.

to dictate policy. Even Mr MacDonald in 1935, though without a party, was able to secure terms from his successor that his personal Parliamentary support could not alone justify. Yet, in the last resort, his power depends upon his party. For he goes to the country not as an individual but as the leader of his party. His personal prestige is one of the elements that make for party cohesion. Loyalty is one of the political virtues. His prestige is, too, one of the elements that make for party success. But, without his party, he is nothing. When Peel lost his party in 1845 he reigned on sufferance till he had passed the Corn Laws Bill, and was then immediately ejected. Mr Gladstone returned in 1892 because he kept his party. Mr Lloyd George, in spite of his great abilities, has never been, since 1921, a likely Prime Minister. Mr MacDonald remained in office after 1932 only because it was considered necessary to retain, not his personal prestige, but the fiction of non-party government.

— The Prime Minister's power in office depends in part on his personality, in part on his personal prestige, and in part upon his party support. But his relations with his colleagues depend also upon the substantial powers that appertain to his office. With the King's consent, he appoints and dismisses ministers. With the like consent, he exercises a wide patronage; and he has a right to be consulted on the more important appointments made by other ministers. He is constantly consulted by ministers on the major problems of their departments; and he is, usually, in particularly close contact with the Foreign Office.<sup>1</sup> Subject to appeal to the Cabinet, he settles disputes between departments. He convenes and presides over the informal meetings of ministers which decide common action by their departments. He sets up bodies, like the Committee of Imperial Defence and the Economic Advisory Council, which determine the common action of departments within their terms of reference. In particular, he presides over the Committee of Imperial Defence, which prepares plans for the co-ordination of departmental activity in the event of a war. He controls the Cabinet

<sup>1</sup> For instance, when Germany's denunciation of the Locarno Treaty became known, Mr Eden's first step was to leave for Chequers.

Secretariat and is consulted by ministers as to the matters which ought to be brought before the Cabinet. He is responsible for seeing that the departments carry out Cabinet decisions. In matters of emergency, he authorises the departments to take action on matters which ought, if there were time, to be brought before the Cabinet. He is the channel of communication between the King and the Cabinet, though other ministers communicate with the King on matters affecting their departments, and the minister in attendance, if any, expresses general opinions. He is in direct communication with the Prime Ministers of the Dominions, and presides at Imperial Conferences.<sup>1</sup> He sometimes receives foreign ambassadors, and sometimes represents the British Government at international conferences and at meetings of the Council and Assembly of the League of Nations. He receives deputations on matters of general political importance. He is leader of his own Parliamentary party and must therefore maintain contact with his supporters in Parliament. If, as is usual, he is leader of the House of Commons, he is, subject to the determination of priority of proposals by the Cabinet, in control of the business of the House, through the Government Whips. He answers questions in Parliament on matters of general policy. He is expected to speak in general policy debates in the House of Commons. As leader of the Parliamentary party he is, generally, leader of the party outside. In that capacity, he is in charge of the central party machine and takes a prominent part in political propaganda. Some of these functions are discussed elsewhere in this book;<sup>1</sup> others are discussed in the present chapter.

It is obvious that these manifold functions make the office of Prime Minister a full-time occupation. The Prime Minister is usually First Lord of the Treasury, partly because he would not otherwise possess an office under the Crown and be able to draw a salary, and partly because the patronage which he exercises is vested in the Lords of the Treasury and is exercised by the First Lord. Otherwise, the office of First Lord

<sup>1</sup> For the appointment of ministers, see *ante*, Chapter III; for the patronage, see *post*, Chapter XIII; for the Cabinet, see *post*, Chapter IX; for the Cabinet Secretariat, see *post*, Chapter IX; for the Committee of Imperial Defence, see *post*, Chapter X; for his relations with the King, see *post*, Chapter XI; for his relations with Parliament, see *post*, Chapter XIV.

carries no duties. Some Prime Ministers have taken executive office either in substitution for or in addition to the office of First Lord. Pitt, Perceval and Canning provide early precedents of Prime Ministers who were also Chancellors of the Exchequer. Peel was Chancellor of the Exchequer in 1834-5. Disraeli said in 1868 that the pressure of work made the junction of the two offices impossible.<sup>1</sup> But Mr Gladstone became Chancellor of the Exchequer after the resignation of Mr Robert Lowe in consequence of the Post Office scandals in 1873 and he again held the office between 1880 and 1882. Mr Baldwin retained the office for a short time after he became Prime Minister in 1923. In each case the Prime Minister was also First Lord of the Treasury.<sup>2</sup>

In 1885 Lord Salisbury was Foreign Secretary as well as Prime Minister. He proposed that Sir Stafford Northcote, as the leader of the House of Commons, should become First Lord of the Treasury. But Lord Randolph Churchill objected to having Northcote as leader, and the latter went to the House of Lords with an earldom and was placated by being made First Lord and the second minister in the Government.<sup>3</sup> Lord Salisbury's original intention was carried out when Lord Randolph Churchill resigned in 1886. Lord Salisbury again became Foreign Secretary, and Mr W. H. Smith became First Lord of the Treasury and leader of the House of Commons. The same arrangement was made in 1895, Lord Salisbury being at the Foreign Office and Mr Balfour being First Lord of the Treasury.<sup>4</sup> Finally Mr MacDonald was both First Lord of the Treasury and Foreign Secretary in 1924. In 1931-5 Mr Baldwin was both Lord President of the Council and Lord Privy Seal, but the latter office imposes no duties.

It was settled in 1873 that when the Prime Minister took two paid offices his combined salary should not be more than £7500. But

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 500.

<sup>2</sup> Since both the First Lord and the Chancellor of the Exchequer are Lords Commissioners of the Treasury, there was an interesting discussion in 1873 as to whether Mr Gladstone had accepted a new office involving re-election. See *Life of Gladstone*, II, pp. 465-72.

<sup>3</sup> *Life of Robert, Marquis of Salisbury*, III, pp. 139-40; for the difficulties of distribution of functions which the original scheme might have caused see *Life of Sir Stafford Northcote*, p. 358.

<sup>4</sup> *Life of Robert, Marquis of Salisbury*, III, p. 339.

neither Mr MacDonald in 1924 nor Mr Baldwin in 1935 took more than the one salary.

Charles James Fox declared that the man who held the headship of the Treasury must be the most important minister because he controlled the patronage of the Crown and the Secret Service money. But that statement referred to a time when the House of Commons was controlled by bribes, pensions and "honours". The Prime Minister's control over his colleagues is derived not from any office known to the law at all, but from the office of Prime Minister, which is not known to the law. It is true that Lord Beaconsfield signed the Treaty of Berlin as Prime Minister, that letters patent of 1905 confer a precedence upon the Prime Minister as such, and that the Chequers Estate Act, 1918, refers to "the person holding the office popularly known as Prime Minister". But these are casual recognitions of a constitutional situation, not the legalisation of that situation. His powers derive from, and are limited by, constitutional conventions.

## § 2. *The Dismissal of Ministers.*

The Prime Minister's power of appointing ministers with the consent of the King and his power to dissolve a Government by a personal resignation are referred to in Chapter III. He possesses also the power to advise the Sovereign to dismiss a minister. According to law, the minister holds his office at the pleasure of the Crown. He can therefore be dismissed, according to law, at any moment. But this prerogative is exercised solely on the advice of the Prime Minister. Such advice would be given only in the most extreme cases. A dismissal is a declaration of weakness which necessarily has repercussions in the House of Commons and in the constituencies. The minister dismissed may have support in the House or even in the Cabinet. If a sufficient section of the House supports him, the Government will be defeated. If a sufficient section of the Cabinet supports him, the Cabinet will be broken up. Moreover, a mere disagreement will lead to the resignation of the dissenting ministers. In the great majority of cases, a minister who is responsible, either in fact or merely technically, for some maladministration, will resign, as Mr Lowe and Mr Ayrton resigned in 1873,

as Colonel Seely resigned in 1914, and as Mr Austen Chamberlain resigned in 1917.<sup>1</sup>

The classic precedent for the dismissal of a minister occurred in 1851. As early as 1848 the Queen was anxious for the removal of Lord Palmerston from the Foreign Office to some other department, because of her fundamental disagreement with his policy. Lord John Russell explained that the Cabinet was in general agreement with that policy, that he frequently disagreed with Palmerston's mode of expression, and that in any case they could not afford to risk Palmerston's hostility.<sup>2</sup> The Queen's complaints, first, that she could not agree with many of Palmerston's drafts and, secondly, that frequently they were sent without her prior approval, continued throughout 1849, 1850, and the early months of 1851. Early in 1850 Baron Stockmar<sup>3</sup> advised the Queen that "having given once her sanction to a measure, the Minister who, in the execution of such measure alters or modifies it arbitrarily, commits an act of dishonesty towards the Crown which the Queen has an undoubted constitutional right to visit with the dismissal of that minister".<sup>4</sup> Later in the same year the question of removing Lord Palmerston from the Foreign Office was considered by Lord John Russell and Lord Lansdowne in consultation with the Queen and Prince Albert.<sup>5</sup> Palmerston refused to move to another office unless there were some reason for it, such as his taking the lead in the House of Commons. He added that "if the Queen or the Cabinet were dissatisfied with his management of the Foreign Affairs, they had a right to demand his resignation, and he would give it, but they could not ask him to lower himself in public estimation".<sup>6</sup> As Palmerston had just defended his foreign policy triumphantly in the House of Commons, this was the last thing that Lord John wanted. Accordingly, Palmerston remained

<sup>1</sup> Sir Samuel Hoare's resignation in December 1935, as a result of popular disapproval of the Hoare-Laval plan, was peculiar since his policy had been approved by the Cabinet. In effect, he resigned to save the Government.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, II, pp. 231-3.

<sup>3</sup> The views of Baron Stockmar on British constitutional questions are of no value, except as indicating what the Queen and Prince Albert believed to be the constitutional position. See *post*, pp. 261-2.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, II, p. 282.

<sup>5</sup> *Ibid.* 1st Series, II, pp. 289-90, 309-12.

<sup>6</sup> *Ibid.* 1st Series, II, pp. 313-14.

at the Foreign Office, but the Queen laid down in a memorandum the duty of the Foreign Secretary to keep her informed, to send the drafts for her approval, and to state distinctly to what her sanction was required. If a draft was arbitrarily altered or modified, she would be entitled to exercise her right of dismissing the minister.<sup>1</sup> The central part of this memorandum was copied almost word for word from Baron Stockmar's memorandum. Lord John Russell sent the Queen's memorandum to Lord Palmerston, who agreed to abide by it.<sup>2</sup>

There was little further difficulty until the arrival of Kossuth in England in the autumn of 1851. The Queen asked Lord John Russell to try to prevent Lord Palmerston from receiving Kossuth. This Russell refused to do,<sup>3</sup> but he appears to have changed his mind and "positively requested" Palmerston not to receive Kossuth.<sup>4</sup> Palmerston at once replied: "I do not choose to be dictated to as to who I may or may not receive in my own house; and... I shall use my own discretion in this matter. You will, of course, use yours as to the composition of your Government."<sup>5</sup> In consequence Russell advised the Queen "to command Lord Palmerston not to receive M. Kossuth".<sup>6</sup> But he thought better of it, decided to consult the Cabinet first, and wrote to Lord Palmerston that the matter would be brought before the Cabinet.<sup>7</sup> The Cabinet agreed with Russell and Palmerston gave way.<sup>8</sup> Nevertheless, he consented to receive at the Foreign Office some deputations with addresses which spoke of the Emperors of Austria and Russia as "odious and detestable assassins". At the Queen's request the matter was brought before the Cabinet, who expressed regret that Palmerston had not ascertained the terms of the addresses, but declined to come to any formal resolution.<sup>9</sup>

Almost immediately the decisive event happened. When the news of Louis Napoleon's *coup d'état* reached England, the Queen at once said that the British Government should stand aloof and express no opinion.

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 315; the actual terms are set out *post*, pp. 276-7.

<sup>2</sup> *Ibid.* 1st Series, II, pp. 315-16.

<sup>3</sup> *Ibid.* 1st Series, II, pp. 392-3.

<sup>4</sup> *Life of Lord John Russell*, II, p. 133.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Letters of Queen Victoria*, 1st Series, II, p. 353.

<sup>7</sup> *Ibid.* 1st Series, II, pp. 394-5; *Life of Lord John Russell*, II, p. 134.

<sup>8</sup> *Life of Lord John Russell*, II, p. 134.

<sup>9</sup> *Ibid.* II, p. 137.

Russell and the Cabinet agreed, and Palmerston sent a despatch accordingly. But when the ambassador communicated its terms to the French minister, he received the reply that Lord Palmerston had already expressed approval of the *coup d'état* in a conversation with the French ambassador. The British ambassador reported this in a despatch which came before the Queen,<sup>1</sup> and she at once asked Lord John Russell for information.<sup>2</sup> After five days Lord Palmerston gave an explanation of his views of events in France.<sup>3</sup> Lord John Russell replied that the question was not as to events in France, but as to the action of the Foreign Secretary in expressing an opinion, which would be taken as the opinion of the British Government, in direct contradiction to a Cabinet decision. He said, therefore, that he had come to the conclusion "that the conduct of foreign affairs can be left no longer in your hands with advantage to the country", and offered Lord Palmerston the Lord-Lieutenancy of Ireland, with or without a peerage.<sup>4</sup> Palmerston declined the offer and stated: "I...shall be prepared to give up the seals of the Foreign Office whenever you inform me that my successor is ready to receive them."<sup>5</sup> The Queen accepted Russell's advice and Palmerston's resignation.<sup>6</sup> The Cabinet also approved Russell's action.<sup>7</sup>

According to a footnote in the *Letters of Queen Victoria*,<sup>8</sup> Prince Albert wrote to Lord John Russell when the Prime Minister communicated his advice to the Queen, saying that the Queen "had contemplated dismissing Lord Palmerston herself, but naturally shrank from using the power of the Crown, as her action would have been criticised without the possibility of making a public defence". This passage was omitted from the letter as published in the *Life of the Prince Consort*.<sup>9</sup> The notion that the Sovereign could, without the consent of the Prime Minister, dismiss a minister, is without foundation. In this instance such action would at once have brought the Crown into conflict with the House of Commons, if not with the Government. The

<sup>1</sup> The despatches are in Ashley, *Life of Viscount Palmerston*, I, pp. 289-99.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, II, p. 412.

<sup>3</sup> Ashley, *Life of Viscount Palmerston*, I, pp. 300-6.

<sup>4</sup> *Life of Lord John Russell*, II, p. 139.

<sup>5</sup> *Ibid.* II, p. 140.

<sup>6</sup> *Letters of Queen Victoria*, 1st Series, II, p. 415.

<sup>7</sup> *Ibid.* II, 1st Series, p. 418.

<sup>8</sup> 1st Series, II, p. 416.

<sup>9</sup> *Life of the Prince Consort*, II, pp. 418-19.



idea is probably the product of Baron Stockmar's unqualified statement in the previous years. Baron Stockmar, as is shown elsewhere, was a dangerous adviser. His ignorance of the British Constitution was equalled only by his belief in his perspicacity.<sup>1</sup>

Lord Palmerston himself stated the correct doctrine in the House of Commons. "I do not dispute", he said, "the right of the noble Lord [John Russell] to remove any Members of the Government whom he may think it better to remove than to retain in the Cabinet."<sup>2</sup> He criticised Lord John Russell not for his dismissal, but for assuming that every act of the Foreign Secretary must be previously approved by the Cabinet.<sup>3</sup> (This precedent certainly established the right of the Prime Minister, with the Sovereign's assent, to dismiss a minister (or, what comes to the same thing, to demand his resignation). But it also shows the difficulty of exercising the right. Lord John Russell took the final step only after a long series of incidents. Each time he hesitated because he believed that Palmerston's secession would split the Cabinet. The resignation was, in the end, the death-warrant of the Government. For Palmerston had his "tit for tat" within three weeks of the meeting of Parliament; the Government was defeated, and resigned.

It is not surprising that subsequent precedents are few. There was certainly a case for the removal of Mr Ayrton from the Office of Works in 1870, and the Queen suggested it.<sup>4</sup> In 1872, Mr Gladstone himself considered dismissal. But he reminded the Queen that "before a public servant of this class can properly be dismissed, there must be not only a sufficient case against him, but a case of which the sufficiency can be made intelligible and palpable [to] the world".<sup>5</sup> The motive force behind the changes consequent upon the Post Office scandals of 1873 is not clear, but it seems that Mr Gladstone himself decided the transfer of Mr Lowe to the Home Office and of Mr Ayrton to the office of judge advocate-general and accepted the resignation of Mr Monsell.<sup>6</sup>

<sup>1</sup> See *post*, pp. 261-2.

<sup>2</sup> *Parl. Deb.*, 3rd Series, vol. 119, col. 112.

<sup>3</sup> For Palmerston's defence, see Ashley, *Life of Viscount Palmerston*, I, ch. VII, where a better defence was made than in the House of Commons.

<sup>4</sup> Guedalla, *The Queen and Mr Gladstone*, I, pp. 229-30.

<sup>5</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 225.

<sup>6</sup> *Life of Gladstone*, II, pp. 460-4; *Letters of Queen Victoria*, 2nd Series, II, pp. 270-6; Guedalla, *The Queen and Mr Gladstone*, I, pp. 420-6.

In 1875 Mr Disraeli decided to dismiss Sir Charles Adderley from the Presidency of the Board of Trade but, finding rearrangement difficult, did not do so.<sup>1</sup> In 1884 Mr Gladstone desired to remove Lord Carlingford from the office of Lord Privy Seal, not because of any misconduct or disagreement, but in order to make way for Lord Rosebery. Lord Carlingford, however, refused to resign. Sir William Harcourt then stated the constitutional position:

I confess I have never doubted that Cabinet offices were held *durante bene placito* of a Prime Minister. No doubt when it comes to an open breach as between Pitt and Thurlow the direct interposition of the Crown may have to be invoked, and the removal would be at the Sovereign's command. But in the ordinary working of a Cabinet I have always supposed that the Prime Minister had the same authority to modify it as he has to construct it....

In my opinion it is no more open to the head of a department in the Cabinet to say to the potter that he will be an *urceus* or an *amphora* than it is to the Commander of a Division to say to the Commander in Chief that he will not be superseded in the command by another officer. The interests at stake are far too serious to admit of the doctrine of fixity of tenure.

That this must be so is obvious because the First Minister can always say to any other of the Administration, "if you don't go, I will". But it is incredible that things should ever be pushed to such a point as that. Good feeling as well as good sense forbids it. And a man must be pachydermatous indeed who is incapable of accepting the first hint that his room is wanted whether he is on a visit or in a Cabinet...<sup>2</sup>

It was in connection with this case that Harcourt wrote to Morley that Mr Gladstone "entertains great doubts as to the right of a Prime Minister to require a Cabinet Minister to resign. I know that he tried it in one case for convenience of reconstruction; he was point blank refused, and acquiesced".<sup>3</sup> Lord Carlingford remained in office until the end of the year, when he resigned.

Lord Salisbury in 1886 in effect dismissed Lord Iddesleigh from his post as Foreign Secretary. Lord Randolph Churchill having resigned, it became desirable to bring in Mr Goschen as Chancellor of the Exchequer. But Mr Goschen very strongly urged that Lord Iddesleigh

<sup>1</sup> *Life of Lord Norton*, p. 222.

<sup>2</sup> *Life of Sir William Harcourt*, I, pp. 508-9.

<sup>3</sup> *Ibid.* II, p. 610.

should not stay at the Foreign Office. Lord Salisbury decided to take the Foreign Office himself, and he justified his supersession of Iddesleigh, both to Iddesleigh and to the Queen, by asserting that it was necessary to give Mr W. H. Smith, as leader of the House of Commons, an office without administrative duties, and the office of First Lord of the Treasury was the only office available. Actually, Lord Iddesleigh first learned of his supersession through a newspaper report.<sup>1</sup>

In 1890 Lord Salisbury desired the resignation of Mr Matthews from the Home Office. He spoke to the Lord Chancellor, who was the Home Secretary's personal friend. In communicating with the Queen, he said:

At present Lord Salisbury does not think that a bare dismissal would be admissible. It would be looked upon as very harsh, and would beget numberless intrigues. When Mr Gladstone got rid of Mr Bruce, who was also an unsuccessful Home Secretary, he put him into another office, the Presidency of the Council. Mr Walpole resigned in 1867, at a time when he was very unpopular on account of the mistakes he had made; but his resignation, to all appearances, was quite voluntary. There is no instance of dismissal;<sup>2</sup> and it would require some open and palpable error to justify it.<sup>3</sup>

The piece of sharp practice by which Mr Balfour rid himself of some of his free trade colleagues in 1903 produced from Lord George Hamilton, one of the sufferers, the comment that: "A Prime Minister has an undoubted right to request any of his colleagues, whose presence in his Cabinet is, in his opinion or judgment, prejudicial to the efficiency or policy of the Government, to resign his office."<sup>4</sup>

In 1911 the reluctance of the Admiralty to accept reforms on the lines of the War Office decided Mr Asquith to transfer Mr McKenna from the Admiralty to the Home Office and Mr Churchill from the Board of Trade to the Admiralty.<sup>5</sup>

<sup>1</sup> *Life of Robert, Marquis of Salisbury*, III, pp. 339-42.

<sup>2</sup> Technically, Lord Palmerston resigned in 1851; but it is difficult not to call it a "dismissal".

<sup>3</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 646.

<sup>4</sup> *Life of the Duke of Devonshire*, II, p. 351.

<sup>5</sup> *Life of Lord Oxford and Asquith*, I, p. 347. Mr Baldwin removed certain ministers, including a Cabinet Minister (the Marquis of Londonderry), after the general election of 1935.

The conclusion seems to be that the Prime Minister possesses the right to ask a minister to resign or to accept another office. This right arises from the necessary pre-eminence of the Prime Minister in his Cabinet. It is, usually, not necessary to use the Crown's power of dismissal. There is a tradition—a kind of public school fiction—that no minister desires office, but that he is prepared to carry on for the public good. That tradition implies a duty to resign when a hint is given. But, in the last resort, the Prime Minister could advise the King to dismiss any recalcitrant minister. As Sir Robert Peel said: "Under all ordinary circumstances, if there were a serious difference of opinion between the Prime Minister and one of his colleagues, and that difference could not be reconciled by an amicable understanding, the result would be the retirement of the colleague, not of the Prime Minister."<sup>1</sup>

Conflict between the Prime Minister and a colleague is, however, a rare occurrence. There is, usually, on the one hand confidence in the colleague and on the other hand loyalty to the Prime Minister. The Prime Minister rarely has either the time or the desire to interfere in departmental matters. If a colleague cannot be trusted, he will not be appointed. If he proves inefficient, a hint is usually enough to produce a resignation. If he proves ineffective in a particular office, it is usually possible to obtain his consent to a transfer, provided that it is possible to make it appear a promotion or that some good reason can be assigned for it. The offices of Lord President of the Council and Lord Privy Seal are very useful for this purpose. They give the holder a high precedence, and they involve no contact with major administration.

### § 3. *The Control of Administration.*

The function of the Prime Minister is primarily one of giving advice when it is asked. Plans are discussed with him long before the stage at which they can be brought before the Cabinet. "There are two persons with whom a Minister ought to be able to toss his thoughts and policy", said Sir Edward Grey.<sup>2</sup> "One is his chief private secretary, and the other is the Prime Minister."

<sup>1</sup> Report from the Select Committee on Official Salaries (1850), p. 36.

<sup>2</sup> Grey, *Twenty-five Years*, I, p. 119.

In particular the Foreign Secretary is usually in close touch with the Prime Minister. The Foreign Office differs from other departments in that matters of political importance are of almost daily occurrence. It is impracticable to bring every item before the Cabinet.<sup>1</sup> That body can do no more than lay down the general lines of action and trust to the Foreign Secretary and the Prime Minister to conform. As Sir Charles Wood wrote to Lord John Russell, with reference to Lord Palmerston's action in 1846, "the Cabinet cannot interfere, for the mischief is done before we hear of anything; and a Cabinet is too cumbersome a machine for such work". Therefore he wrote to impress upon Lord John Russell the necessity of taking more into his own hands "the direction of the *detailed steps* of foreign matters with France".<sup>2</sup>

Lord Grey, according to the same minister, had exercised a close control over Palmerston.<sup>3</sup> Lord John Russell was compelled to do the same. He frequently amended Lord Palmerston's despatches.<sup>4</sup> Sometimes, even, he directed Lord Palmerston as to what he was to say.<sup>5</sup> In 1850 he informed Lord Palmerston that all drafts should have his concurrence before they were submitted to the Queen.<sup>6</sup> In the same year he ordered Lord Palmerston to withdraw a note which Palmerston had already sent off without consultation.<sup>7</sup>

The arrangement by which despatches went to the Prime Minister before submission to the Queen was mentioned to Lord Derby in 1852.<sup>8</sup> But after the fall of Lord Palmerston the practice became one of consultation rather than of control. The Duke of Argyle, who was in Lord Aberdeen's and Lord Palmerston's Cabinets, said: "It is the system of all Cabinets to which I have belonged that the Secretary for Foreign Affairs is in close personal relations with the Prime Minister,

<sup>1</sup> The important despatches are circulated to the Cabinet, but prior sanction is obtained only for major developments of policy.

<sup>2</sup> *Life of Lord John Russell*, II, p. 4.

<sup>3</sup> *Ibid.*

<sup>4</sup> For examples, see *Later Correspondence of Lord John Russell*, I, pp. 357-8; *Letters of Queen Victoria*, 1st Series, II, pp. 221-2; *ibid.* 1st Series, II, p. 262; *ibid.* 1st Series, II, pp. 276-7; *ibid.* 1st Series, II, pp. 277-8; *ibid.* 1st Series, II, pp. 398-9.

<sup>5</sup> *Letters of Queen Victoria*, 1st Series, II, pp. 212-15.

<sup>6</sup> *Ibid.* 1st Series, II, pp. 263-4.

<sup>7</sup> *Ibid.* 1st Series, II, p. 322.

<sup>8</sup> *Ibid.* 1st Series, II, p. 453.

and that a great deal of the Foreign Office business is settled between them, without its being referred to the Cabinet at all.”<sup>1</sup> During the Russo-Turkish War, the lack of sympathy between Lord Derby at the Foreign Office and the rest of the Cabinet compelled Lord Beaconsfield to interfere widely in foreign affairs, and after January, 1878, Lord Derby became “almost an under-secretary”.<sup>2</sup>

Mr Gladstone's practice may be stated in his own words. To Sir William Harcourt he said in 1894: “I was made habitually privy in the time of Clarendon and Granville to the ideas as well as the business of the Foreign Minister, and in consequence the business of that department, if and when introduced to the Cabinet, came before it with a joint support as a general rule.”<sup>3</sup> With Lord Rosebery at the Foreign Office the same practice was followed. He was “in almost daily communication with the Prime Minister, often by brief notes, oftener still by stepping across Downing Street to secure five minutes of advice”.<sup>4</sup>

Lord Salisbury held a different view. “The Prime Minister”, he said, “may lay down the broad principles of foreign policy, but those principles can only be carried out by the judicious execution of a number of details, and if the Prime Minister attempts to interfere in these latter, the only result is confusion.”<sup>5</sup> This statement was made in 1886 when, for a short time, Lord Salisbury was not his own Foreign Secretary. It may be doubted whether it is consistent with experience. (Obviously the Prime Minister has not the same control of foreign policy as the Foreign Secretary. It is the latter who distinguishes between principles and details and he consults the Prime Minister on the former only.) Lord Salisbury himself pointed to the importance of the Prime Minister's control when, earlier in the same year, he told the Queen that Lord Rosebery ought to bring as little as possible before the Cabinet and settle it with Mr Gladstone and the Queen. “Nothing”, he said, “was

<sup>1</sup> Duke of Argyle, *Autobiography and Memoirs*, I, p. 445.

<sup>2</sup> *Life of Disraeli*, II, p. 1119.

<sup>3</sup> *Life of Sir William Harcourt*, II, p. 270; see also *Life of Sir Edward Cook*, pp. 148-9.

<sup>4</sup> *Life of Lord Rosebery*, I, p. 277.

<sup>5</sup> *Life of Robert, Marquis of Salisbury*, III, pp. 313-14.

ever settled satisfactorily in the Cabinet."<sup>1</sup> The Queen adopted his advice and, almost, his language.<sup>2</sup> Later in the year, indeed, she reminded Lord Salisbury, who was again Prime Minister, of his former advice.<sup>3</sup>

The Queen, of course, trusted Lord Salisbury and (with qualifications) Lord Rosebery. She distrusted the foreign policy of Cabinets, especially Liberal Cabinets. (The Cabinet can and does lay down the general tendency of foreign policy, but for matters of urgency the Foreign Secretary must rely on consultation with the Prime Minister.<sup>4</sup>) He can, also, consult the Prime Minister on semi-technical matters which do not appear to be of sufficient importance to demand Cabinet sanction. The most notorious example is that of the "conversations" between French and British military advisers which began in 1905 under the Conservative Government. They were renewed by the Liberal Government by agreement between the Prime Minister, the Foreign Secretary and the Secretary of State for War.<sup>5</sup> Though of a purely technical nature they involved political issues. For their assumption was that Germany would attack France and that Great Britain would support France. The fact of consultation did not imply a promise of support to France, but it necessarily led French ministers to assume that such support would be forthcoming. Lord Grey therefore considered, in 1925, that they ought to have been brought before the Cabinet.<sup>6</sup> But neither the Prime Minister nor Lord Ripon, who represented the Foreign Office in the House of Lords, and who was informed of them, suggested a Cabinet discussion.<sup>7</sup> They must have become known to the members of the Committee of Imperial Defence. But Mr Asquith did not hear of them until 1911, and they then seemed to him to be "rather dangerous".<sup>8</sup> They became known to other members

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 45.

<sup>2</sup> *Ibid.* 3rd Series, I, p. 48.

<sup>3</sup> *Ibid.* 3rd Series, I, p. 211.

<sup>4</sup> A standing Cabinet committee is another method.

<sup>5</sup> Grey, *Twenty-five Years*, I, pp. 74-6.

<sup>6</sup> It is said in the *Life of Lord Oxford and Asquith*, I, pp. 348-9, that the Cabinet was always consulted, but that ministers absorbed in their own departments paid little attention to memoranda until the Agadir crisis frightened them. The evidence of Lord Grey, Lord Morley and Mr Lloyd George is to the contrary.

<sup>7</sup> *Ibid.* I, pp. 86-7.

<sup>8</sup> *Ibid.* I, pp. 94-5.

of the Cabinet in 1912 and it was then agreed to secure a statement from France that Great Britain was not pledged to action by them.<sup>1</sup> In 1914 further conversations took place with Russian military officers, and this time Cabinet approval was obtained.<sup>2</sup> There can be no doubt that the conversations were one of the elements that compelled the majority of the Cabinet to agree in 1914 that Great Britain was "pledged in honour" to France, though the actual *casus belli*, which was accepted by all but two of the Cabinet as compelling British intervention, was the infringement by Germany of Belgian neutrality.<sup>3</sup>

↳ The telegram by which, on July 30th, 1914, Sir Edward Grey refused to bind Great Britain to neutrality on terms suggested by Bethmann-Hollweg was sent off with Mr Asquith's sanction, but was not submitted beforehand to the Cabinet. It was approved by the Cabinet the same afternoon.<sup>4</sup> The ultimatum to Germany in 1914 was sent also without prior Cabinet approval, though with the consent of the Prime Minister.<sup>5</sup> But it was necessarily consequent upon previous Cabinet decisions.<sup>6</sup> Thus, the Prime Minister's function here was to see that the action of the Foreign Secretary was consistent with the Cabinet decisions. His action was subsequently approved by the Cabinet, though two ministers resigned. As soon as war broke out, foreign policy was subservient to war policy. The dilatory nature of the Cabinet system compelled a much greater freedom of action by the two war ministers and the Foreign Secretary in consultation with the Prime Minister. Such informal consultations became canalised in formal channels with the setting up of the War Committee. But the necessity of bringing the decisions of the Committee before the Cabinet produced, in the opinion of some, delay and hesitation. The demand made by Mr Lloyd George and supported by Mr Bonar Law for a War Committee with ample executive powers was the main cause of the resignation of Mr Asquith in 1916. Henceforth the Cabinet was superseded by a small

<sup>1</sup> *Life of Lord Oxford and Asquith*, I, pp. 96-9.

<sup>2</sup> *Ibid.* I, p. 285.

<sup>3</sup> For the consultations with France, see also *Life of Sir Henry Campbell-Bannerman*, II, pp. 252, 256, 266.

<sup>4</sup> Grey, *Twenty-five Years*, II, p. 339.

<sup>5</sup> Churchill, *World Crisis*, I, p. 220.

<sup>6</sup> *Life of Lord Oxford and Asquith*, II, p. 93.



War Cabinet which, in substance, controlled foreign policy as one of the aspects of war government.<sup>1</sup>

< In the War Cabinet the Prime Minister was pre-eminent. He became, in substance, an administrator. Indeed he created a special secretariat—known as the “garden suburb” because it was housed in temporary buildings in the garden of 10 Downing Street—with whose assistance he was able to intervene in the various departments. The Foreign Secretary was not a member of the War Cabinet, though Lord Balfour was given the right to be present at all meetings. Nor was the intervention ended at the armistice in 1918. Mr Lloyd George was necessarily the chief British representative at the Peace Conference, and questions were settled by him as one of the “Big Five”, frequently without reference to the Foreign Secretary or his officials.<sup>2</sup>

Subsequently, nearly all questions of foreign policy arose out of Peace Conference decisions and were settled by the Prime Minister.

In the large private secretariat which he built up for himself in Downing Street, he found a convenient and ever ready agency for carrying into effect any orders which he felt moved to give. In the pressure of the times the necessity for consulting or even informing the Foreign Secretary was sometimes overlooked. Interviews would be granted to the representatives of foreign Governments without the knowledge of the Foreign Minister; and in these circumstances it is not surprising that occasions arose on which it seemed to other Powers that the British Government spoke with two discordant voices.<sup>3</sup>

The Treaty of Sèvres was negotiated by Mr Lloyd George at the Supreme War Council in London and settled at San Remo in April, 1921. It contained two outstanding provisions to which the Foreign Secretary had always been opposed. The subsequent negotiations between Greeks and Turks were presided over by the Prime Minister.<sup>4</sup> Lord Curzon finally drafted a protest which was not sent owing to the resignation of Mr Lloyd George.

There has grown up a system under which there are in reality two Foreign Offices: the one for which I am for the time being responsible,

<sup>1</sup> On the Cabinet in wartime, see *post*, Chapter x.

<sup>2</sup> *Life of Lord Curzon*, III, pp. 259–60.

<sup>3</sup> *Ibid.* III, p. 261.

<sup>4</sup> *Ibid.* III, pp. 271–4; for further examples, see *ibid.* III, p. 314; Fitzroy, *Memoirs*, II, p. 699; Nicolson, *Curzon, The Last Phase*, p. 173.

and the other at No. 10—with the essential difference between them that whereas I report not only to you but to all my colleagues everything that I say or do, every telegram that I receive or send, every communication of importance that reaches me, it is often only by accident that I hear what is being done by the other Foreign Office.<sup>1</sup>

This system disappeared with the end of the coalition, and the “garden suburb” was pulled down. With Mr Bonar Law the pre-war situation was restored. Despatches are not sent to the Prime Minister before they are sent off; but, if the Foreign Secretary feels at all doubtful, he consults the Prime Minister. The nature and scope of the consultation depend on the personalities of Prime Minister and Foreign Secretary. It is said that Mr MacDonald desired to be kept closely informed of developments while Mr Henderson was at the Foreign Office. Sir John Simon, on the other hand, appears to have been given a wider discretion. Obviously, his political position as the leader of the Liberal group in the Cabinet, his long official experience, and the smallness of Mr MacDonald’s group made the Prime Minister’s position less strong than it had been in the Labour Government. On the other hand, it seems probable that voluntary consultation was more effective.

Common opinion asserts that Mr Baldwin is even less inclined to interfere. No doubt he asks for information when he receives the despatches in the daily print, and he feels that elucidation is desirable. Also, being personally more accessible than Mr MacDonald, informal consultation is possibly more frequent. On the other hand, he is said not to be inclined to take decisions outside the Cabinet. Where he has complete confidence in the Foreign Secretary, as he had in Sir Austen Chamberlain between 1924 and 1929, he appears to be glad to leave decisions to the Foreign Secretary. In consequence, there is said to be a tendency for the Foreign Office to take decisions which cannot be submitted to the Cabinet without prior consultation. Certainly the course of the Laval-Hoare discussions at the end of 1935 appear to warrant the assumption that the Foreign Office has more independence than it possessed before 1914.

The difficulty that decisions have to be taken frequently is, however,

<sup>1</sup> *Life of Lord Curzon*, III, p. 316.

occasionally avoided by the use of Cabinet Committees. New situations do not arise frequently. Problems of foreign policy develop through a long course of actions and negotiations. The Cabinet can lay down the general tendency of British policy. If the Foreign Secretary feels that consequential decisions will be needed of a kind for which he hesitates to accept sole responsibility, or that changing events make necessary constant formal consultation, he will ask the Cabinet to appoint a committee. This committee, on which the Prime Minister will probably serve, can be summoned within a few hours. This method is not frequently employed. More often, as is explained in the next chapter, the function of a Cabinet Committee is only to report to the Cabinet.

⟨ Though the Prime Minister's relations are closest with the Foreign Office, he is available for consultation by other ministers. Such consultation is especially necessary where preliminary steps are taken which may have important political consequences.⟩ For instance, Lord Carnarvon received Lord Salisbury's consent before he entered into communication with Mr Parnell.<sup>1</sup> They are also important where emergency action is necessary and there is no time to secure Cabinet approval. Thus, the Bank Charter Act was suspended in 1847, 1857, 1866 and 1914 by a letter to the Bank of England signed by the Prime Minister and the Chancellor of the Exchequer.<sup>2</sup> Numerous other technically illegal acts were done in 1914 with the Prime Minister's sanction and were subsequently ratified by Parliament.<sup>3</sup>

⟨ Sometimes, indeed, the Prime Minister interferes without being asked.⟩ Mr Gladstone said that "the Prime Minister has no title to override any one of the departments. So far as he governs them, unless it is done by trick, which is not to be supposed, he governs them by influence only".<sup>4</sup> ⟨ But the right of the Cabinet to override a minister cannot be contested, and a Prime Minister who is sure of obtaining support if necessary can in practice override a colleague's decision.⟩ This is done, usually, at the request of another minister, and particularly

<sup>1</sup> *Life of Lord Randolph Churchill*, I, p. 447.

<sup>2</sup> Lloyd George, *War Memoirs*, I, p. 103.

<sup>3</sup> *Ibid.* I, pp. 105-11.

<sup>4</sup> Gladstone, *Gleanings*, I, p. 244.

where a dispute arises between two departments. A very good example was the contest in 1915 between the Ministry of Munitions and the War Office over the design of shells. Design was the function of the Ordnance Board, which was subject to the War Office. But Mr Lloyd George, as Minister of Munitions, claimed that as he was responsible for the quality of munitions, he must be responsible for their design. He appealed to the Prime Minister, who decided in his favour and the function was transferred to the Ministry of Munitions.<sup>1</sup> In 1907, the Admiralty refused to allow a certain paper to be submitted to the Committee of Imperial Defence. Mr Haldane appealed to the Prime Minister, who overruled the Admiralty.<sup>2</sup> In 1915 the War Office proposed to remove an intelligence officer who was sending "discouraging" reports from Russia. When Mr Lloyd George "heard this on good authority", he went to the Prime Minister who "promptly interposed his authority and the distinguished officer remained at his post".<sup>3</sup> An even stronger case of intervention was provided by Mr Lloyd George in 1921. He sent for the Officer Commanding the Home District in order to obtain some information. He came to the conclusion that the officer was "no use" and asked the Secretary of State to remove him. The Secretary of State objected, on the advice of Sir Henry Wilson, and ultimately a compromise was reached.<sup>4</sup>

In order to exercise this authority, the Prime Minister must be able to obtain adequate information. He can, of course, ask for papers. Lord Palmerston indicated to Lord Panmure, during the Crimean War, the kind of despatches to the army that he wished to see.<sup>5</sup> There are cases, too, in which the Prime Minister has not hesitated to communicate with subordinates of the ministers. Peel was in constant communication with Gladstone when the latter was Vice-President of the Board of Trade.<sup>6</sup> Lord Granville said in 1870: "I imagine that the

<sup>1</sup> Addison, *Four and a Half Years*, pp. 146 *et seq.*

<sup>2</sup> *Esher Papers*, II, pp. 246-7.

<sup>3</sup> Lloyd George, *War Memoirs*, I, p. 457.

<sup>4</sup> *Diaries of Sir Henry Wilson*, II, p. 285.

<sup>5</sup> *Panmure Papers*, I, p. 150.

<sup>6</sup> Hyde, *Mr Gladstone at the Board of Trade*, p. 34.

Prime Minister has an undoubted right to communicate directly either with our representatives abroad or with Foreign Ministers in London. But I think it is in his interest as much as in that of the Foreign Secretary that he should only appear as the *deus ex machina*."<sup>1</sup> Mr Lloyd George imposed no such self-limitation during the war and afterwards.<sup>2</sup> Lord Randolph Churchill, however, objected to the intervention of the Prime Minister in 1885. The Queen was extremely anxious that the Duke of Connaught should be appointed to the command at Bombay. Churchill, as Secretary of State for India, did not desire to appoint him. The Queen asked Lord Salisbury to ask the opinion of the Viceroy. The reply was communicated by Salisbury to Churchill, who at once tendered his resignation. Salisbury did not claim any right to intervene, but merely said that he telegraphed on behalf of the Queen because the Viceroy did not possess the Queen's cypher. The dispute was settled by Salisbury's informing the Viceroy that his message had been from the Queen, that the Cabinet had not yet considered the question, and that the matter was still open.<sup>3</sup> The conclusion seems to be that it is wise for the Prime Minister not to intervene except in extreme cases.

#### § 4. *Action without Cabinet Approval.*

There is, finally, one aspect of the Prime Minister's pre-eminence which, to some extent, indicates the Cabinet's dependence upon him. New policies are, in theory, the concern of the Cabinet. But the Prime Minister can, within limits, compel the acceptance of policies by announcing them publicly. The Cabinet then has either to accept the policy or lose its leader. Frequently the former is the better alternative. Lord John Russell's letter on the Corn Laws was written while the Whigs were in opposition. But effectively it bound them to a programme which they must have put in force if they had accepted office when Sir Robert Peel resigned. In 1850, Lord John Russell's famous letter in denunciation of the new Catholic hierarchy was sent without Cabinet consultation, and it bound them to acceptance of a Bill which

<sup>1</sup> *Life of Lord Granville*, II, p. 64.

<sup>2</sup> See *ante*, pp. 168-9.

<sup>3</sup> *Life of Lord Randolph Churchill*, I, pp. 504-16.

many of them disliked.<sup>1</sup> Lord John Russell was particularly liable to "upset the coach". But other examples are not wanting. Mr Gladstone in effect decided to dis-establish the Irish Church and to introduce Home Rule—though in both cases he was in opposition. Mr Disraeli, even when not Prime Minister, sometimes accepted amendments of substance without consultation. (In accepting a motion for a Committee of Inquiry on the "Kilmainham Treaty" in 1882, Mr Gladstone ran counter to a previous Cabinet decision.) He subsequently apologised to the Cabinet for having been carried away by temper.<sup>2</sup> Sir Henry Campbell-Bannerman's personal decision exempted trade unions from liability for torts and included domestic servants within the Workmen's Compensation Bill.<sup>3</sup> In respect of the former he reversed a decision of the Cabinet; in respect of the latter he decided against the publicly expressed intentions of the minister in charge of the Bill.

(In 1916 Mr Lloyd George apparently decided to summon the Imperial War Conference on his own responsibility.) He consulted the Colonial Secretary. A week later he announced his intention in Parliament. The first the War Cabinet heard of the matter officially was on the following day, when he reported his speech. The War Cabinet was evidently doubtful of the proposal, but ultimately agreed not to a formal conference, but to a series of enlarged meetings of the War Cabinet.<sup>4</sup> It is even said that Mr Baldwin publicly raised the standard of "protection" in 1923 without consulting the Cabinet.<sup>5</sup>

But it appears that in general Mr Baldwin places more reliance on his departmental ministers than any of his predecessors. It must be emphasised once more that the office of Prime Minister, like every other office in the Government, is very largely what its occupant chooses to make it.

<sup>1</sup> *Later Correspondence of Lord John Russell*, I, p. 46.

<sup>2</sup> *Life of Sir Charles Dilke*, I, p. 489.

<sup>3</sup> *Life of Sir Henry Campbell-Bannerman*, II, pp. 278, 280.

<sup>4</sup> Lloyd George, *War Memoirs*, IV, pp. 1731-5.

<sup>5</sup> *Life of Lord Cave*, p. 264.

## CHAPTER IX

# The Cabinet

### § 1. *The Nature of the Cabinet.*

The Cabinet has been described as "such of His Majesty's confidential servants as are of the Privy Council". Like some of Dr Johnson's definitions, this raises more questions than it solves. When Lord Melbourne used the phrase in one of his letters to Queen Victoria, the editors of the Queen's *Letters* thought it necessary to insert a footnote to explain what it meant.<sup>1</sup> The nature of the Cabinet is more easily explained by analogy than by definition. It is the Board of Directors for Great Britain and all those parts of the British Empire which do not possess self-government. It is said to be a body of servants of the Crown because, usually, its members hold office under the Crown, though, as has been explained in Chapter III, members without portfolio are not uncommon. They are said to be confidential servants because they determine the main issues of the "King's" policy. They belong to the Privy Council because, historically, the Cabinet is a private meeting of those Privy Councillors in whom the King has particular "confidence" for the time being.<sup>2</sup>

The definition is, in short, a relic of history. In substance the Cabinet is the directing body of the national policy. Consisting of the principal leaders of the party in power, it is able to forward that policy by reason of its control of the House of Commons. Consisting, too, of the heads of the more important Government departments, it is able to forward its policy by laying down the principles to be followed by the central administrative machine. Their service under the Crown is the legal explanation of the political fact that ministers hold important Government offices. Membership of the Privy Council is a historical survival. It is said that the Privy Councillor's oath restrains those who take it from publishing information obtained in the service of the

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, I, p. 285.

Crown. It is difficult to believe that it is the oath alone and not the weight of tradition, the insistence of the Prime Minister, or the disapproval of colleagues, that makes the secrecy of the British Cabinet more effective than is common in most governmental systems. In spite of the oath, close relations between ministers and the press have not been unknown at various times in the history of the Cabinet. The Official Secrets Acts now provide legal penalties for the disclosure of Cabinet secrets.

The Cabinet consists of some twenty ministers, most of whom are party leaders in the House of Commons, the others being supporters of the same party in the House of Lords.<sup>1</sup> The increase in the functions of the State has necessitated an increase in the number of departments exercising important functions, and thus of the number of Cabinet ministers. During most of the nineteenth century, the Cabinet contained from twelve to fifteen members. Disraeli's Cabinet of 1874 contained twelve members only. He excluded, for instance, the President of the Board of Trade. The experiment was not a success. For one of the most important legislative proposals was a Merchant Shipping Bill which was promoted by the President and withdrawn by the Cabinet. The session was not propitious for the Government, and Sir Stafford Northcote said that the Government's misfortunes were largely due to the fact that the President had not been able "to make himself disagreeable in Cabinet".<sup>2</sup> It may indeed be said that Peel's Cabinet of thirteen in 1841 was the smallest possible even at that date. During the present century the number of Secretaries of State has been increased from five to eight. The Department of Education was separated from the Privy Council in 1899 and its functions have immensely increased. The Ministry of Labour possesses functions which are almost entirely of recent creation. The Board of Agriculture and Fisheries has been converted into a Ministry with substantially increased functions.<sup>3</sup> The Local Government Board has become the Ministry of Health,

<sup>1</sup> See *ante*, Chapter III; and as to the War Cabinet, see *post*, Chapter x.

<sup>2</sup> *Life of Lord Norton*, p. 220. •

<sup>3</sup> It was practically laid down in 1895 that the President of the Board of Agriculture should be in the Cabinet; cf. Fitzroy, *Memoirs*, I, p. 236.



again with largely increased functions. The League of Nations has so increased the work of the Foreign Office that the Foreign Secretary usually needs assistance, preferably from a Cabinet minister. Above all, the work of each department, whether new or old, has grown so much that, in the first place, the heads of departments have less time to devote to general policy, and, in the second place, the matters submitted to the Cabinet have become much more numerous. In consequence, informal discussions outside the Cabinet are much more frequent, and inside the Cabinet much work has had to be delegated to committees. Cabinet ministers who are not overburdened with departmental duties, such as the Lord President of the Council, the Lord Privy Seal, and sometimes ministers without portfolio may assist in this work. The Cabinet of 1936 contains twenty-one members.<sup>1</sup>

Though, as has been said, the Cabinet is chosen when the Government is formed,<sup>2</sup> and though certain offices are recognised as carrying Cabinet rank, there is nothing to prevent the Prime Minister from promoting a junior minister to the Cabinet without changing his office. Thus, Sir Rufus Isaacs and Sir Douglas Hogg, while holding the office of Attorney-General, were brought into the Cabinet; and Mr Herbert Morrison was similarly promoted while Minister of Transport. Also, the Prime Minister may request the attendance of any minister to give advice on a particular matter. For instance, the Attorney-General would be summoned if some legal question were involved and the Lord Chancellor desired assistance; the Minister of Transport would be summoned if any of his departmental business required his attendance; the Secretary of Mines might be asked for his advice on a coal-mining dispute.

The Cabinet consists of party leaders with Parliamentary experience. For the most part, they will have borne the burden of opposition, itself a training for government. Generally, they have had experience of office in previous Governments. Occasionally, as in 1852 (when Derby's "who? who?" ministry of untried men came into office), in

<sup>1</sup> For the present Cabinet, see Appendix II, *post*, pp. 410-1.

<sup>2</sup> *Ante*, pp. 61-3.

1905 (when the Liberals came in after eleven years of opposition), and in 1924 (when the Labour Party first secured office), a large proportion of members inexperienced in government has entered the Cabinet. Generally, however, it is energy and not experience that is lacking. Sometimes, indeed, one is reminded of the reply of M. Clémenceau, at the age of eighty, to the question why he was not in M. Briand's Government. "Je suis trop jeune", he said. Lord Derby, the Prime Minister, once remarked that he was often urged to bring in "new blood", but that, as often as he followed this advice, he heard complaints about "raw recruits".

## § 2. Functions.

The main functions of the Cabinet were set out in the Report of the Machinery of Government Committee<sup>1</sup> (1918) as:

- (a) the final determination of the policy to be submitted to Parliament;
- (b) the supreme control of the national executive in accordance with the policy prescribed by Parliament; and
- (c) the continuous co-ordination and delimitation of the authorities of the several Departments of State.

This statement rightly makes no distinction between legislation and administration. In the modern State, most legislation is directed towards the creation or modification of administrative powers. The importance of private law cannot be denied; and one of the purposes of a constitution is to provide a means by which disputes as to private rights can be settled. It is, further, one of the functions of government to provide for modifications in the judicial system and the law which it administers as between subject and subject. In most countries it is a principal task of the Ministry of Justice to secure improvements in the civil law and its administration. Even in England, where there is no such Ministry, the Lord Chancellor has as one of his numerous duties the supervision of the civil law. But in most highly developed communities, and above all in Great Britain, the main function of government is the provision of services, including the maintenance of external relations and the defence of the country, for the welfare of the people.

<sup>1</sup> Report of the Machinery of Government Committee, C. 9230, 1918, p. 5.

Legislation is thus the handmaid of administration, and Parliament's legislative powers are part of the means by which it controls administration.

Whether legislation is required to carry out an administrative policy is a technical question. The Cabinet has to decide on the policy. The technician explains that to carry it out legislation is required. Since Parliamentary time is limited and Parliamentary control over an alteration of law is far greater than it is over an alteration of administration within the law, this fact has to be taken into account in determining the policy.<sup>1</sup> But otherwise no distinction is made between a policy that requires legislation and a policy that does not. The Cabinet is not an "executive" instrument in the sense that it possesses any legal powers; it is a policy-formulating body. When it has determined on a policy, the appropriate department carries it out, either by administrative action within the law or by drafting a Bill to be submitted to Parliament so as to change the law.

The Cabinet is a general controlling body. It usually meets once a week only and for two hours. Many of its members are departmental ministers, with important departmental duties to perform. It neither desires nor is able to deal with all the numerous details of government. It expects a minister to take all decisions which are not of real political importance. Every minister must therefore exercise his own discretion as to what matters arising in his department ought to receive Cabinet sanction. The minister who refers too much is weak; he who refers too little is dangerous. Lord Palmerston was among the latter. While he was Foreign Secretary his colleagues went in perpetual fear of trouble. A revealing anecdote by Lord Clarendon suggests that, as Prime Minister, he suffered from the same belief in the soundness of his judgment. "I remember once his agreeing with me that Vera Cruz ought to be blockaded, and desiring me to write accordingly in the Queen's name to the Admiralty. I said, 'Surely not without bringing it before the Cabinet?'—'Oh, ah! the Cabinet,' was his answer, 'very well, call

<sup>1</sup> At the beginning of each session the Home Affairs Committee of the Cabinet discusses what Bills shall be promoted in the session. Of the Bills proposed (frequently enough for a whole Parliament) at least ninety per cent. are "departmental".

<sup>2</sup> See Gladstone, *Gleanings*, I, p. 242; and Mr Gladstone's statement reported in *Life of Sir Edward Cook*, pp. 148-9.

them then, if you think it necessary.”<sup>1</sup> Mr Joseph Chamberlain, as Colonial Secretary, was inclined to be Palmerstonian.<sup>2</sup>

Certain matters are, however, regarded as being normally outside the Cabinet's competence. Lord Oxford and Asquith said that, speaking generally, the exercise of the prerogative of mercy, the personnel of the Cabinet, and the making of appointments, are not discussed in Cabinet.<sup>3</sup> The question of the reprieve of Sir Roger Casement in 1916 was brought before the Cabinet.<sup>4</sup> But normally the exercise of the prerogative of mercy is left to the Home Secretary; the function is as “judicial” a function as any that goes by that name. The personnel of the Cabinet, on the other hand, has frequently been discussed by the Cabinet in the past, though usually in exceptional circumstances.<sup>5</sup> Other appointments are still regarded primarily as matters of “patronage” which are left to the Prime Minister for the time being, or to a minister in consultation with the Prime Minister, or to a minister acting on his own responsibility. But it is clear that, where a real political issue is involved, Cabinet authority would be obtained. Mr Gladstone asserted that the appointment of a Viceroy had “more than once” been referred to the Cabinet,<sup>6</sup> and Lord Oxford and Asquith said that in his own Cabinet the appointment of a Viceroy was considered by the Cabinet.<sup>7</sup> Also, it is conceivable that if a minister insisted on appointing to a superior office, such as that of a Permanent Under-Secretary, without the consent of the Prime Minister, the latter might bring the matter before the Cabinet. No instance is known.<sup>8</sup>

<sup>1</sup> *Life of the Earl of Clarendon*, II, p. 240. For other examples of decisions by the Prime Minister without Cabinet sanction, see *ante*, pp. 172-3.

<sup>2</sup> For a good example see *Life of Joseph Chamberlain*, II, pp. 440-41.

<sup>3</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 194.

<sup>4</sup> *Life of Randall Davidson*, II, p. 789.

<sup>5</sup> See *ante*, Chapter III.

<sup>6</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 349; for an example see *ibid.* 2nd Series, III, p. 271.

<sup>7</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 194. The appointment of Mr Sinha to the Governor-General's Council was approved by the Cabinet in 1909: Morley, *Recollections*, II, p. 301.

<sup>8</sup> For Queen Victoria's protest against consideration by the Cabinet of the expenditure of his income by the Prince of Wales, see *Letters of Queen Victoria*, 2nd Series, I, p. 80. Normally questions referred to the Attorney-General as to the bringing of prosecutions are not brought before the Cabinet: see the case of

Another matter which is rarely, if ever, discussed in Cabinet is the conferment of honours.<sup>1</sup> The Queen assumed that the question of granting a dukedom to the Marquis of Lansdowne, on his retirement from the Viceroyalty of India, had been considered by the Cabinet in 1894. Accordingly, she protested, "as the fountain of honour", that such matters are not discussed by ministers.<sup>2</sup> Mr Gladstone replied that the Cabinet might be consulted as to both the conduct and the appointment of a Viceroy and added:

Mr Gladstone has never known a case where the Cabinet have interfered in a question of honour purely titular, or honour connected with an office lying beyond the established circle of political administration. But, in the public mind, and in ordinary practice, the Cabinet is viewed as the seat of ultimate responsibility; and, in view of the precedents he has quoted [relating only to conduct and appointment], Mr Gladstone owns himself unable to exclude from all concern in the honours bestowed upon a Viceroy those who have been and may be consulted upon his retirement, and who are ultimately responsible for his administrative acts. It is true indeed, as your Majesty observes, that the Sovereign is the fountain of honour; but it is also true that the Sovereign is the fountain of law. That Mr Gladstone did not consult the Cabinet (to which every minister is as a rule entitled to appeal in matters concerning him) was due to the absence of Lord Kimberley [Secretary of State for India] but also to a sentiment of deference to your Majesty.<sup>3</sup>

Mr Gladstone, it may be suggested, laid down the correct doctrine in this passage. The Cabinet is regarded as having, and accepts, ultimate responsibility for all political acts. If an act of a minister involves, or may involve, political issues of some magnitude, he ought to bring it before the Cabinet. Normally, the prerogative of mercy involves the

Mr J. H. Thomas, and Sir John Simon's statement thereon: 313 H.C.Deb. 5 s., 39; and see the debate on the Campbell case, 177 H.C.Deb. 5 s., 581-704; but plenty of precedents were quoted in that debate: see especially the speech of the Attorney-General: *ibid.* 596-619. See *post*, p. 181.

<sup>1</sup> "The Prime Minister may consult anybody he pleases, and very often does, but the idea that he should bring before the Cabinet the question of honours is one utterly foreign to our whole constitutional procedure." Marquess Curzon of Kedleston in the House of Lords, 7th March 1923: 53 H.L.Deb. 5 s., 286-7.

<sup>2</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 347.

<sup>3</sup> *Ibid.* 3rd Series, II, pp. 349-50.

exercise of a judicial function. Yet it is not impossible to imagine circumstances in which it would be of major political importance. The pardon of the perpetrator of a political crime, such as political assassination, treason,<sup>1</sup> riot, unlawful assembly, or seditious libel, might involve political questions of the first order of magnitude. It would not be, in substance, different from the release of Mr Parnell in 1885. A somewhat similar question is raised by the discretion of the Attorney-General, through his control of the Director of Public Prosecutions, as to public prosecutions. It is unthinkable that the desirability or otherwise of such a prosecution should in ordinary circumstances be brought before the Cabinet. But it is clear that a prosecution for a political offence may raise political issues. The breadth of the offence of sedition, for example, is such that the law is much stricter than the practice.<sup>2</sup> Accordingly, it is not uncommon for the question of prosecution to be considered by the Cabinet. Thus, the War Cabinet appears to have given instructions to Sir Frederick Smith (afterwards Earl of Birkenhead) as to certain prosecutions, though Sir Frederick protested.<sup>3</sup> In 1919 Sir Gordon Hewart, now Lord Chief Justice, consulted the Home Secretary, who brought the matter before the Cabinet, as to a prosecution for sedition.<sup>4</sup> In 1924 Sir Patrick Hastings gave instructions for a prosecution against the editor of *The Workers' Weekly* for an offence under the Incitement to Mutiny Act. Questions were asked in the House of Commons, the Prime Minister intervened, the question was discussed by the Cabinet, and thereupon the Attorney-General gave instructions to ask the magistrate's leave to withdraw the prosecution. These proceedings led to the moving of a vote of censure in the House of Commons. An amendment for a Select Committee, moved on behalf of the Liberal Party, was passed against the Labour Government.<sup>5</sup> The Government thereupon advised a

<sup>1</sup> As in 1916, when the proposed reprieve of Sir R. Casement, convicted of treason for inciting Irish soldiers to fight on the German side, was brought before the Cabinet: *Life of Randall Davidson*, II, p. 789. The exercise of the prerogative would have had political repercussions.

<sup>2</sup> See Jennings, *The Law and the Constitution*, pp. 237-8.

<sup>3</sup> 177 H.C. Deb. 5 s., 614-5.

<sup>4</sup> *Ibid.* 598-9.

<sup>5</sup> See the debate: 177 H.C. Deb. 5 s., 581-704.

dissolution and was defeated at the ensuing general election. The Attorney-General and the Prime Minister defended themselves on the ground that a political prosecution may involve political questions. "Where the public interest may conflict with the strict exercise of his duty", it is, said Sir Patrick Hastings, not only the right but the duty of the Attorney-General to consult the Cabinet.<sup>1</sup> "Every Law Officer who is undertaking a prosecution in the interests of the State must possess himself not only of guidance on technical law", said the Prime Minister, "but must possess himself of guidance on this question, whether if a prosecution is instituted the effect of the prosecution will be harmful or beneficial to the State in whose interests it has been undertaken."<sup>2</sup> The Liberal members did not specifically dissent from these propositions, but contented themselves with a demand for inquiry. Whatever be the merits of their application to Mr Campbell's case, it seems that the propositions themselves cannot seriously be controverted.

Again, most appointments are determined by the qualifications of the available personnel. Yet certain key positions like the Viceroyalty of India, or the Permanent Secretaryship to the Treasury, or the office of Chief Economic Adviser, might be, in some political conditions, major political questions.<sup>3</sup> Similarly, though the grant of honours is too unimportant a matter to occupy the time of the Cabinet, it is conceivable that with a Liberal majority in the House of Commons it might assume larger proportions.

The annual Budget statement occupies a peculiar position. Though of major political importance, and therefore always brought before the Cabinet, it is not circulated, but is disclosed orally to the Cabinet a few days before it is made in the House of Commons.<sup>4</sup> It therefore does not follow the usual procedure whereby the principles are dis-

<sup>1</sup> 177 H.C. Deb. 5 s., 599.

<sup>2</sup> *Ibid.* 629.

<sup>3</sup> In 1918 the resignation of Major-General Sir Hugh Trenchard was considered by the War Cabinet, and the Secretary of State did not accept the resignation until it had been so considered: 105 H.C. Deb. 5 s., 972.

<sup>4</sup> See the evidence of Sir Maurice Hankey before the Tribunal of Inquiry in 1936: Budget Disclosure Inquiry (1936), Minutes of Evidence, p. 25. The average period is four or five days, but it was twelve days in 1933 and twenty-one days in 1936, in both cases because of the Easter recess.

cussed in Cabinet, the details worked out in committee, and the full proposals circulated and debated. The reason is the fundamental importance of secrecy<sup>1</sup>—though it may be doubted whether the need for secrecy is any greater in this case than in many other matters—but its effect is to give the Chancellor of the Exchequer a much greater personal control over his Budget than is the case with most other departmental proposals. The rule is in any case one of convenience only, and the Cabinet may ask for longer notice and more effective discussion. In 1860 the Cabinet asked for nearly a month's notice of Mr Gladstone's famous Budget of that year. Owing to the fact that the financial year had not then closed, Mr Gladstone was unable to agree, but he gave a week's notice.<sup>2</sup> The Budget must be distinguished from the Estimates. Occasions on which disputes over estimates have been brought before the Cabinet are frequent. As a result of Cabinet decisions on such disputes, Lord Randolph Churchill resigned in 1886 and Mr Gladstone in 1894. Again, it is inconceivable that fundamental changes will be made without the Prime Minister's prior consent. Further, the Cabinet can always insist on modifications after the Budget statement has been made. (They can be camouflaged as "concessions" to public or Parliamentary opinion.) Finally, the Cabinet can overthrow a budget altogether if it is prepared to risk the resignation of the Chancellor of the Exchequer.

Another matter which is now never discussed in Cabinet is the exercise of the prerogative of dissolving Parliament.<sup>3</sup> This is, however, a post-war development; and if the Prime Minister desires the advice of the Cabinet there is nothing to prevent him from raising the question.

It is not only the right of a minister to consult the Cabinet on major matters. It is his duty to do so. Sometimes, however, the urgency of the matter makes prior consultation impossible. In such circumstances, the Prime Minister's authorisation is enough. Examples have already been cited.<sup>4</sup> The situation most frequently occurs in respect of foreign

<sup>1</sup> Snowden, *Autobiography*, II, p. 617.

<sup>2</sup> Guedalla, *Gladstone and Palmerston*, p. 162.

<sup>3</sup> See *post*, pp. 311-3.

<sup>4</sup> *Ante*, Chapter VIII, pp. 172-3.



affairs, where most matters are of political importance and yet have frequently to be decided out of hand. Sometimes, indeed, it is necessary for the Foreign Secretary to refuse to give an answer until the Cabinet, and occasionally Parliament also, have been consulted. For instance, Sir Edward Grey in 1906 refused to give an assurance that if France were attacked by Germany Great Britain would support France, and said that such an assurance would require both Cabinet and Parliamentary authority.<sup>1</sup>

The difficulty that most Foreign Office action is of political importance, but that prior consultation is not always possible, is overcome by circulating important Foreign Office telegrams and despatches daily to each member of the Cabinet, whose members can then raise any question they think fit—provided that they read the daily print.<sup>2</sup> The Duke of Argyll emphasised the duty of the Foreign Secretary in 1891.<sup>3</sup> Nevertheless, some Foreign Secretaries have been inclined towards secretiveness. Lord Palmerston frequently failed to consult not only the Cabinet, but also the Prime Minister and the Queen.<sup>4</sup> In 1886, when the Queen and Lord Salisbury were in alliance against the Liberal Party, Lord Salisbury advised the Queen that Lord Rosebery ought to bring as little as possible before the Cabinet, and to settle everything with the Queen and Mr Gladstone, as nothing was ever settled satisfactorily in the Cabinet.<sup>5</sup> The Queen advised Lord Rosebery accordingly, using almost Lord Salisbury's own words.<sup>6</sup> The Queen was not too much a partisan, and was too much an autocrat, not to consider that what was sauce for a Liberal was also sauce for a Conservative; and later in the same year she reminded Lord Salisbury, now both Prime Minister and Foreign Secretary, of his advice.<sup>7</sup> Lord Salisbury agreed, but pointed out that it was necessary to discuss the Bulgarian question in the Cabinet because some of the members desired to criticise a Foreign Office telegram.<sup>8</sup>

<sup>1</sup> *Life of Sir Henry Campbell-Bannerman*, II, p. 255.

<sup>2</sup> Important telegrams and despatches are also circulated by the Dominions Office and the Colonial Office.

<sup>3</sup> *Life of Lord Granville*, II, pp. 506–7, quoting a letter by the Duke to *The Times*, April 16th, 1891.

<sup>4</sup> *Ante*, pp. 157–9.

<sup>5</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 45.

<sup>6</sup> *Ibid.* 3rd Series, I, p. 48.

<sup>7</sup> *Ibid.* 3rd Series, I, p. 211.

<sup>8</sup> *Ibid.*

Lord Rosebery, at least, seemed to agree with Lord Salisbury's advice. In 1893 he extended British influence in Uganda without Cabinet sanction, and marked the document in question "not to be printed". This fact was discovered by Sir William Harcourt nine months later, and he wrote: "The claim therefore is that the Foreign Secretary may set aside the judgment of the Prime Minister and the Cabinet, and give without their knowledge instructions of the gravest consequence which are contrary to their opinion. I believe such a pretension to be absolutely inconsistent with the traditions of English administration, and it was finally condemned in the well-known case of Lord Palmerston in 1851."<sup>1</sup>

Nevertheless, when Lord Rosebery was Prime Minister in 1895, he refused to accede to Sir William Harcourt's request, which was supported by Lord Kimberley, the Foreign Secretary, to submit the Nicaraguan dispute to the Cabinet, alleging that it was impossible to collect the Cabinet together. Sir William Harcourt said that "the refusal of Lord Rosebery to reserve a question for the Cabinet on the request of the Foreign Secretary and the remonstrance of the leader of the House of Commons is, according to my experience, without precedent".<sup>2</sup>

Mr Lloyd George alleges that from 1906 to 1914 "there was a reticence and a secrecy which practically ruled out three-fourths of the Cabinet from the chance of making any genuine contribution to the momentous questions then impending [in foreign policy]... Direct questions were answered with civility, but were not encouraged... We were not privileged to know any more of the essential facts than those which the ordinary newspaper readers could gather".<sup>3</sup>

A comparison of accounts does not suggest that there was any deliberate concealment. Mr Lloyd George's impression was probably derived from Sir Edward Grey's excessive departmentalism and his lack of interest in internal questions. There is as yet no adequate evidence on Mr Lloyd George's assertion that there was deliberate suppression and distortion of information by the military authorities

<sup>1</sup> *Life of Sir William Harcourt*, II, pp. 315-16; see also *ibid.* II, p. 319.

<sup>2</sup> *Ibid.* II, pp. 331-2.

<sup>3</sup> Lloyd George, *War Memoirs*, I, pp. 46-51.

later in the war. Mr Lloyd George says that Sir Henry Wilson, at Sir Douglas Haig's instigation, misled the Cabinet on the subject of the morale of the French troops and suppressed the facts that the French generals were against the Passchendaele plan, that the battlefield was unsuitable for the plan, and that some of the British generals were against the plan.<sup>1</sup> Later on, it was not told that the generals actually fighting advised stopping the offensive and was not informed of the defeat at Cambrai.<sup>2</sup>

### § 3. *The Cabinet Secretariat.*

Until 1916 the business of the Cabinet was run on lines which would seem peculiar to the new generation of ministers. There was no Cabinet Office and no Secretary. There was, therefore, no formal agenda. A minister who desired to raise a matter for decision circulated a memorandum if he thought fit, and informed the Prime Minister, whether or not a memorandum had been circulated, that he proposed to bring a certain matter before the Cabinet. The Prime Minister was thus able to compile an informal agenda. As a rule the meeting began with any items of foreign affairs which the Foreign Secretary desired to raise, or which any minister desired to bring up in consequence of the telegrams and despatches which had been circulated. Then the Prime Minister would call in turn upon those ministers who had indicated to him their desire to raise questions of home or imperial affairs. There was, therefore, some order in the discussion. Indeed, it was rare for a minister to raise a matter without informing the Prime Minister beforehand. For if a minister, finding that time was being taken over other subjects, tried to "jump a claim" or interpose some item which the Prime Minister had not put down, the Prime Minister would gently suggest that the question might be postponed until certain other questions had been disposed of. Then, while the discussion was proceeding, he might pass a note suggesting that perhaps it would be well to postpone the matter until next time, when it could be taken earlier in the sitting and perhaps discussed with that close attention and at that length that its importance obviously warranted.

<sup>1</sup> Lloyd George, *War Memoirs*, IV, pp. 2140-48, 2191-2204.

<sup>2</sup> *Ibid.* IV, pp. 2216, 2257.

The discussion on any item having terminated, the Prime Minister would make a note in order to convey the result to the Sovereign, and the Cabinet would proceed to the next business. The minister concerned would then indicate to his department what the decision was—that is, if he could remember it. With some Prime Ministers, the Cabinet was never in doubt what the decision was. Mr Balfour, for instance, always made the point abundantly clear. With other Prime Ministers, however, the Cabinet might break up convinced that it had come to a conclusion, but not knowing what that conclusion was. While Mr Asquith was Prime Minister, for instance, it was quite common for a minister's private secretary to telephone to the Prime Minister's private secretary to ask what the decision had been. For there was no record of the Cabinet's decision save the letter sent to the King, of which the Prime Minister would keep a copy.<sup>1</sup>

This unbusinesslike system completely broke down under the stress of war. One of the first acts of Mr Lloyd George was to institute a Cabinet Secretariat to organise the business of the War Cabinet. This Secretariat was in fact the Secretariat of the Committee of Imperial Defence. When the former War Committee was reconstituted by Mr Balfour in 1903, a Foreign Office clerk was assigned to keep the minutes. With the increase of the Committee's work and the setting up of sub-committees under Sir Henry Campbell-Bannerman, the Secretariat necessarily increased both in size and in importance. It not only prepared the agenda and kept the minutes of the Committee and its sub-committees, but also acted as the link connecting the service departments, the Foreign Office, and the other departments concerned with the development of war plans. Those plans were put into execution on the outbreak of war. The War Council set up in November, 1914, was developed out of the Committee and used its Secretariat. It was replaced by the Dardanelles Committee in 1915, and the functions of the latter were gradually extended so that it became the War Committee. It used the same Secretariat, and "Colonel Hankey [the Secretary] sat between the Prime Minister and the door, ready to attend to either, as might be required".<sup>2</sup>

<sup>1</sup> See some examples, *post*, pp. 210-11.

<sup>2</sup> Clement Jones, *Empire Review*, XIX, p. 1410.

On the formation of the War Cabinet in 1916,<sup>1</sup> Mr Lloyd George attached the War Committee's Secretariat to the Cabinet. Thus, the Secretariat of the Committee of Imperial Defence became the Secretariat of the Cabinet; and Colonel (now Sir) Maurice Hankey, the Secretary to the Committee, became the first Secretary to the Cabinet.<sup>2</sup> The new department appeared in the estimates in 1917 (on a supplementary estimate). The Machinery of Government Committee in 1918 recommended that the Secretariat should be permanently maintained "for the purpose of collecting and putting into shape [the Cabinet] agenda, of providing the information and the material necessary for its deliberations, and of drawing up the results for communication to the departments concerned".<sup>3</sup> In 1922 Mr Bonar Law regarded it as one of the undesirable relics of the War Cabinet and proposed to abolish it. Its utility had, however, been so clearly proved that it was decided to continue it, though its functions were narrowly defined. The Cabinet Secretariat and the Secretariat of the Committee of Imperial Defence are now administratively distinct, though there are important elements of contact. Sir Maurice Hankey is not only Secretary to the Cabinet, but also Secretary to the Committee of Imperial Defence and Clerk of the Privy Council. His private secretary and the subordinate staff serve both the Cabinet and the Committee of Imperial Defence. But the Deputy Secretary and a Principal seconded from the Treasury deal only with the business of the Cabinet and its Committees.

In the War Cabinet, the Secretary and two Assistant Secretaries were usually present. This practice has since been altered and only the Secretary or, in his absence, the Deputy-Secretary is present. During the war, also, the Cabinet Office transmitted to the departments the decisions of the War Cabinet.<sup>4</sup> This practice too has been altered; each minister now receives only the draft Cabinet Conclusion and it is his responsibility to instruct his department as to the decisions taken, in so far as they need departmental action. Where a

<sup>1</sup> See *post*, pp. 235-6.

<sup>2</sup> Lloyd George, *War Memoirs*, III, pp. 1080, 1081.

<sup>3</sup> Report of the Machinery of Government Committee, p. 6.

<sup>4</sup> See *The War Cabinet: Report for the Year 1917*, C. 9005/1918, pp. 3-4. For a defence of this practice, see 155 H.C.Deb. 5 s., 223.

decision affects a department whose minister is not in the Cabinet, an extract of the Conclusions is sent to that minister in respect of any matter affecting his department.

The functions of the Cabinet Office are, therefore:

- (a) to circulate the memoranda and other documents required for the business of the Cabinet and its committees;
- (b) to compile under the direction of the Prime Minister the agenda of the Cabinet and, under the direction of the chairman, the agenda of a Cabinet committee;
- (c) to issue summons of meetings of the Cabinet and its committees;
- (d) to take down and circulate the Conclusions of the Cabinet and its committees and to prepare the reports of Cabinet committees; and
- (e) to keep, subject to the instructions of the Cabinet, the Cabinet papers and conclusions.

#### § 4. *The Cabinet Agenda.*

In the eighteenth century it was the practice of any minister who desired to lay a matter before the Cabinet to summon it for that purpose. The regularisation of business made for regular Cabinets, and for many years the Cabinet has met weekly during the Parliamentary session. Additional meetings are summoned by the Prime Minister when they are necessary. The question of the right of the Prime Minister to refuse to summon a Cabinet is perhaps of some theoretical interest. As a matter of practice, it never arises. If a matter is of great urgency, it is inconceivable that the Prime Minister will not recognise it as such. If a dispute has arisen between the Prime Minister and a minister, that alone is a question of urgency upon which the Prime Minister himself will desire an immediate decision.

Normally, a proposal is submitted to the Cabinet by the minister concerned in the form of a written memorandum. Copies of these memoranda are reproduced, usually by the departments, but occasionally by the Cabinet Office, and are circulated by that Office. If a memorandum is of any considerable length it generally concludes with a summary prepared in order that ministers who are not specially conversant with the subject may readily inform themselves of what is proposed. But the insistence on memoranda, which is an

elementary rule of business, does not prevent an item being placed, with the Prime Minister's approval, on the agenda without a memorandum. Moreover, it is of course open to the Prime Minister to allow questions not mentioned on the agenda to be raised as matters of urgency.

It is a Cabinet instruction, hitherto renewed by each new Cabinet, that memoranda, draft Bills and other constituents of the Cabinet agenda are not to be circulated until after their subject-matter has been fully examined between the department from which they emanate, the Treasury, the Law Officers where contentious Bills are involved,<sup>1</sup> and any other departments concerned. Great emphasis is placed on this requirement, since it secures that every question has been fully examined from all relevant points of view before the Cabinet is asked to take a decision. In the case of a Bill, it is laid down that the covering memorandum must state that this rule has been followed, though it appears that this is not always done. In the case of consultation other than with the Treasury, the Cabinet Office assumes that the Cabinet instruction has been complied with. But, as a result of attempts made in 1919 to secure proper financial control, it is laid down that no proposal involving questions of finance shall be circulated until the sanction of the Chancellor of the Exchequer has been obtained. Strictly speaking, no doubt, there is no veto. For, except in very exceptional circumstances, it is unlikely that the Chancellor of the Exchequer would refuse to allow a proposal to go forward, no matter how great his opposition. What no doubt usually happens in practice is that he asks the minister not to circulate his memorandum until the Treasury has been able to prepare for circulation a memorandum pointing out the financial implications of the proposal and stating the Chancellor's objections, if any, to the scheme on financial grounds. It is extremely unlikely that a proposal summarily objected to by the Chancellor and the Prime Minister would find favour with the Cabinet. In January, 1919, Mr Churchill, as Secretary of State

<sup>1</sup> It is believed that this requirement and indeed much of the present procedure was originated by the Labour Cabinet in 1924 as a result of complaints by Sir Patrick Hastings, then Attorney-General. When an important and contentious Bill is on the agenda, the Attorney-General may be summoned.

for War, concocted a scheme for the armies of occupation with Field-Marshal Sir Henry Wilson. It was based on the continuance of compulsory service, and was strongly objected to by Mr Lloyd George, who was in Paris. Mr Lloyd George refused to have it brought before the War Cabinet in his absence, and Mr Bonar Law, who presided over the Cabinet, refused to allow a decision to be taken. But next day Churchill, Wilson and Haig saw Lloyd George, who then allowed it to be brought before the Cabinet.<sup>1</sup>

The consent of the Chancellor of the Exchequer and of the Prime Minister having been obtained, the Cabinet Office circulates the memorandum to the members of the Cabinet. Normally, the necessary copies are provided by the department concerned; but where the department has no facilities for reproduction, the Cabinet Office undertakes to provide the necessary number. Subject to reference, in case of doubt, to the Prime Minister or to the minister from whom the document is received, the Secretary has a discretion to circulate papers to ministers outside the Cabinet whose Departments are affected. Also, a minister may ask for additional copies.

It is an instruction to the Secretary, subject to the power of the Prime Minister to waive the requirement, that no proposal shall be placed upon the Cabinet agenda until a period of five days has elapsed since the circulation of the appropriate memoranda.<sup>2</sup> These memoranda are circulated daily, and more often if necessary. The agenda itself is compiled a few days before the meeting, and when approved by the Prime Minister is circulated to all Cabinet ministers the same evening. The order of the agenda depends in part upon the traditional order of business. That is, subject to any special matters to be raised by the Secretary of State for Foreign Affairs, the first item is "Foreign Affairs (if any)". This enables the Secretary of State to give any general explanation that he thinks fit, and enables any minister to call attention to any matter of importance set out in the Foreign Office despatches and telegrams of the week. The agenda is, however, invariably submitted to the Prime Minister, and he can change the order, or direct the deletion of items,

<sup>1</sup> *Diaries of Field-Marshal Sir Henry Wilson*, II, pp. 165-6.

<sup>2</sup> This rule appears to have been laid down in 1924, see p. 190 *n.*



or add new items. The agenda, in short, is as much under the control of the Prime Minister as it was when there was no formal circulated agenda. Each item refers, however, to the relevant Cabinet papers. Thus, a minister's private secretary can gather together the necessary documents, attach them to the agenda, and so enable the minister to prepare himself for the Cabinet discussions.

If after the agenda has been circulated questions of urgency arise, the Prime Minister can always authorise a supplementary agenda paper. This is circulated as quickly as possible and is, if necessary, laid on the table. It is the recognised right of a minister to have circulated as a Cabinet document any remarks which he may desire to make on a Cabinet proposal.<sup>1</sup> When Mr Balfour circulated his memorandum on fiscal reform in 1903, for instance, Mr Ritchie and Lord Balfour of Burleigh circulated reasoned statements against its conclusions.<sup>2</sup> But it appears that normally, and apart from departmental memoranda, ministers may prefer to make orally such statements on general policy. It has to be remembered, in this connection, that the Cabinet minutes will contain a reference to the memorandum and the memorandum itself will be preserved in the Cabinet Office, unless the Cabinet otherwise directs. If, on the other hand, the minister states his case orally, the minutes will not as a rule indicate which minister put forward these arguments. In other words, the minister who circulates a memorandum is putting his views on record.

The items on the agenda are usually concerned with questions of departmental policy upon which the ministerial head of a department desires a Cabinet decision. Wider political questions, not of a departmental nature, would normally be raised by the Prime Minister. It is generally understood by the departments that their documents should be as complete as possible, and should contain the various arguments in favour of the proposal and the criticisms which might be brought against it. But, probably, the purpose of this rule is effectively secured by the requirement, already mentioned, that no proposal should be circulated until it has been submitted to the interested departments, especially the Treasury in respect of financial matters, or to the Law

<sup>1</sup> *Life of the Eighth Duke of Devonshire*, II, p. 339.

<sup>2</sup> *Ibid.*

Officers in respect of legislative proposals. In any case, the Cabinet does not like to be confronted with technical inter-departmental questions of minor importance. It considers that the ministers concerned should themselves settle such matters.

§ 5. *Procedure in Cabinet.*

• When Lord Balfour became Lord President of the Council in 1925 he told Mr Baldwin that Cabinet business was three or four times as great as when he first took Cabinet office in 1886. The amount of business necessarily depends on political conditions. There have been periods of overwhelming pressure, as between 1914 and 1919, between 1930 and 1932, and since 1935. During the intervals, the Cabinet as such has not been heavily overburdened. In 1934 there were less than fifty meetings, though this was below the average, which may be taken to be something between sixty and seventy a year. Certainly the length of Cabinet meetings has not expanded in proportion to the increase in business. For this there are several reasons. The first is that Cabinet instructions since 1919 have made clear, and have repeated at intervals, that no question is to be brought before the Cabinet until it has been submitted to all the departments concerned. Inter-departmental questions must therefore be settled inter-departmentally so far as is possible. The institution of the Cabinet Secretariat, and particularly the practice of securing the consent of the Chancellor of the Exchequer before a proposal is circulated, have enabled this rule to be effectively enforced. Secondly, the practice of consultation between leading ministers<sup>1</sup> has enabled agreement to be reached before it becomes a matter of Cabinet debate.<sup>2</sup> This development is neither so recent nor so important as is commonly alleged. Thirdly, the better distribution of memoranda through the Cabinet Office and insistence upon the rule that, so far as possible, every proposal should be accompanied by a memorandum, and every memorandum circulated for five days before it is discussed, together with the circulation of

<sup>1</sup> Sometimes referred to as "the inner Cabinet"; but erroneously, for it is purely informal and bears no relation to the "inner Cabinet" of the eighteenth century.

<sup>2</sup> 304 H.C.Deb. 5 s., 363 (1935).

a formal agenda, has enabled ministers to come to a meeting much better prepared. Fourthly, the Cabinet now makes much greater use of committees, and in particular the institution of the Home Affairs Committee has relieved the Cabinet of some of its former work of a technical kind on Government Bills. Finally, the Committee of Imperial Defence has relieved the Cabinet of the necessity for discussing problems of defence in detail except so far as they involve questions of principle. That Committee, as will be explained in the next chapter, has no executive powers; but when a question has been fully discussed by all the ministers really concerned, in the Committee, much debate in Cabinet is sometimes rendered unnecessary.

But for these developments, the Cabinet would be quite unable to dispose of the growing number of public questions with which the Government is concerned. The Cabinet may contain twenty or more ministers. Most of them have long political experience. Most of them have important departmental duties which, in their turn, have grown in number and importance. Most of them have popular constituencies to nurse. Most of them, too, have to attend to business in or near the House of Commons while it is sitting—and the House sits more frequently than it used to sit. Some of them, further, are concerned with the general management of their party machines.

Even now, complaints are sometimes made that the Cabinet is overworked. Careful examination of those complaints suggests, first, that those who complain do not distinguish between the Cabinet work of ministers and their work in other capacities, and, secondly, that they usually arise during periods of political pressure. An agenda of fifteen items, every one of which has been carefully prepared, is not usually too long for a committee meeting of two hours. Experienced ministers are accustomed to rapid decisions. If the subject-matter is really controversial and has not been properly discussed beforehand, reference to a committee is an obvious expedient, and it is an expedient which is often adopted. But where there has been a full exploration of the ground, either inter-departmentally or in committee, a long debate ought not to be necessary. Where the point is one of real political importance, it may have been discussed informally by the leading ministers. The com-

plaints arose chiefly immediately after the war, when the scope and variety of problems were alike enormous, during the Labour Governments, and since 1935.

We may put aside as wholly exceptional the problems of the post-war period. Also, no system of government can cope adequately with a situation such as that of 1935-6, when the Italo-Abyssinian conflict, the denunciation of the Locarno Treaty, the expansion of the defence services, the settlement of the Dardanelles question, the negotiations with Egypt, and the approval of Unemployment Assistance Regulations, all had to be settled almost at the same time. It is more instructive to consider the experience of the Labour Governments. Undoubtedly, a party which comes newly to power, with a vast mass of general proposals for social reform, must necessarily be called upon to do more work than a party which has been in power, with short intervals, for a long period, and which does not propose radical reforms. Also, the social and economic difficulties which the Labour Government of 1929-31 had to face were greater than those of any Government since 1922. That Government came into power just after the top of the boom had been reached, and world economic and, therefore, political difficulties were rapidly deteriorating. Further, the Labour Governments had no majority in the House of Commons, and they had to face the opposition of the House of Lords to all their more important legislative proposals. Possibly, too, the difficulties of the Labour ministers were aggravated by their own inexperience. Few of them had had much departmental experience. They had, for the most part, been unable to pass through the regular progression from parliamentary private secretary to junior minister, and from junior minister to the Cabinet. Some of them were, in consequence, unable to make the fullest use of their official advisers. For all these reasons, the position of the Labour Governments was exceptional. Whatever happens, a Labour Government must be more hard pressed than a Conservative Government or a Coalition which contains a substantial Conservative element. But a Labour Government with a majority, and composed mainly of persons with previous ministerial experience, would, it is believed, be able to carry out reforms at a reasonable pace.

It is certainly the impression that the Conservative Government of 1924-9 and the National Governments between 1932 and 1935 (omitting, therefore, the difficult period of the first National Government) were able to cope with their Cabinet business without difficulty.

It is true that sometimes decisions are not taken until too late. The Cabinet of 1884, and Mr Gladstone in particular, was so concerned with the prospect of obtaining an international conference to discuss the problem of Egypt that there was no time to discuss the rescue of General Gordon.<sup>1</sup> Sometimes the appropriate minister has to take action with the Prime Minister's sanction and without consulting the Cabinet.<sup>2</sup> Sometimes the minister himself takes action in the hope that his action will be ratified. Thus, in 1915 there was a dispute between Lord Kitchener at the War Office and Mr Lloyd George at the Ministry of Munitions as to the provision of guns. Lord Kitchener appealed to the Cabinet, which set up a committee to determine whether the guns were necessary. The committee met and adjourned. But Mr Lloyd George deemed the matter urgent and provided the guns without Cabinet sanction.<sup>3</sup>

The minister can always protect himself by consulting the leading ministers. For though in theory all Cabinet ministers are equal, in practice a few ministers dominate discussions by reason of their personality, their political support, and the importance of their offices. "In most Governments", said Mr Lloyd George, "there are four or five outstanding figures who by exceptional talent, experience, and personality, constitute the inner council which gives direction to the policy of a ministry. An administration that is not fortunate enough to possess such a group may pull through without mishap in tranquil season, but in an emergency it is hopelessly lost."<sup>4</sup>

Many examples could be cited;<sup>5</sup> but a few are of outstanding importance. In 1853, when the question was raised of sending ships for the

<sup>1</sup> *Life of Sir Charles Dilke*, II, p. 57; *Life of the Eighth Duke of Devonshire*, I, pp. 465-6; *Life of Joseph Chamberlain*, I, p. 524.

<sup>2</sup> See *ante*, pp. 167-8.

<sup>3</sup> Lloyd George, *War Memoirs*, II, pp. 559-61.

<sup>4</sup> *Ibid.* III, p. 1042.

<sup>5</sup> One of the earliest examples occurred in 1832. The Prime Minister (Lord Grey), the Lord Chancellor (Lord Brougham), and the Home Secretary (Lord Melbourne), decided an Irish question because the dispersion of ministers made a Cabinet impossible. *Melbourne Papers*, p. 190.

protection of Constantinople, Lord Aberdeen summoned a meeting of five ministers. Lord John Russell attended as Secretary of State for Foreign Affairs. Sir James Graham, as First Lord of the Admiralty, was technically responsible and necessarily present. Lord Palmerston who, as Home Secretary, was not departmentally concerned, was summoned so as to prevent his opposing the step when Cabinet sanction was sought.<sup>1</sup>

In 1878, when the defence of Constantinople again became a question of policy, "an inner Cabinet was formed to direct the activities of the rest. It consisted of the Prime Minister, Lord Salisbury and Lord Cairns... These three men met together constantly, went through the messages which had been received from abroad since their last consultation, and decided upon the action to be recommended to their colleagues."<sup>2</sup> The situation here was peculiar, for the Foreign Secretary, Lord Derby, was not in agreement with the Cabinet's policy. Thus, the inner Cabinet was actually in departmental control. It reported to the whole Cabinet, where the policy agreed upon was forced upon the Cabinet and sometimes telegrams were actually drafted in the Cabinet.<sup>3</sup>

In 1898 Lord Milner's letter from South Africa, which in effect contemplated war with the Transvaal, was circulated by Mr Joseph Chamberlain, as Colonial Secretary, only to Mr Balfour (acting Prime Minister), the Duke of Devonshire, the Chancellor of the Exchequer, the First Lord of the Admiralty, and the Secretary of State for War. Mr Chamberlain answered without consulting the Cabinet.<sup>4</sup>

The steps leading to the outbreak of war in 1914 were taken by the Foreign Secretary in consultation with the Prime Minister.<sup>5</sup> The consequential steps, such as the carrying out by the departments of the plans of the Committee of Imperial Defence, were authorised by the ministers concerned after informal consultations.<sup>6</sup> Subsequently, the

<sup>1</sup> *Life of the Earl of Clarendon*, II, p. 3; *Life of Henry Reeve*, I, p. 295.

<sup>2</sup> *Life of Robert, Marquis of Salisbury*, II, p. 209.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Life of Joseph Chamberlain*, II, p. 365.

<sup>5</sup> *Ante*, p. 167.

<sup>6</sup> *Charlton, World Crisis*, I, pp. 217-30. The decision to order Sir John French not to retire beyond the Seine after the retreat from Mons was taken by "a few ministers", who sent Lord Kitchener to France with "Cabinet instructions". Sir Edward Grey, Lord Kitchener and Mr Churchill decided (in the absence of the Prime Minister) to send the Naval Brigade to the defence of Antwerp. See *Life of Lord Oxford and Asquith*, II, p. 125.

conduct of the war fell largely into the hands of committees of the Cabinet, until it became necessary to supersede the ordinary Cabinet altogether by the War Cabinet of five members.<sup>1</sup>

In 1930 the Prime Minister, Mr Henderson (Foreign Secretary), Mr Thomas (Lord Privy Seal), Mr Snowden (Chancellor of the Exchequer), and Mr Clynes (Home Secretary), were in the habit of meeting once a week for a general conversation about the Parliamentary situation and the state of the Labour Party.<sup>2</sup>

The committee system is now an essential part of Cabinet procedure. Such committees were not unknown even in the first half of the nineteenth century. The Reform Bill of 1832 was drafted by a committee of four persons, not all of whom were members of the Cabinet.<sup>3</sup> That of 1851 was referred to a committee of three persons.<sup>4</sup> Committees were used during the Crimean War; and those of military affairs and coast defences were reconstituted in 1856.<sup>5</sup> The War Cabinet of 1916-19 developed the committee system considerably. Indeed, the War Cabinet discussed only general issues and its normal method of operation was through committees.<sup>6</sup> The post-war Cabinets do not use committees so much, though they are a normal part of their working.

When the ordinary Cabinet was reconstituted in October, 1919, a Finance Committee, consisting of the Prime Minister, the Lord Privy Seal, the Chancellor of the Exchequer, the President of the Board of Trade and Lord Milner, was set up. It assisted the Chancellor of the Exchequer (Mr Austen Chamberlain) in the preparation of the Budget and considered the reduction of the civil service and the armed forces to a peace establishment.<sup>7</sup> It is understood, however, that this committee is no longer in existence. Questions of finance which are not settled by the Chancellor of the Exchequer are dealt with in full Cabinet, though any question can be referred to an *ad hoc* committee if necessary. The chief standing committee of the Cabinet, the Committee of Im-

<sup>1</sup> *Post*, Chapter x.

<sup>2</sup> Snowden, *Autobiography*, II, pp. 924-5.

<sup>3</sup> *Memoirs of Earl Spencer*, p. 292.

<sup>4</sup> Greville, *Memoirs*, 2nd Series, III, p. 418.

<sup>5</sup> *Panmure Papers*, II, p. 317.

<sup>6</sup> *Post*, pp. 237-8.

<sup>7</sup> 120 H.C.Deb. 5 s., 744-5.

perial Defence and the Defence Policy and Requirements Committee<sup>1</sup> apart, is the Home Affairs Committee, which was established by the War Cabinet in June, 1918, and has been reconstituted by every Cabinet since that date.      X    ✓

The Home Affairs Committee performs two functions. In the first place, it considers the technical aspects of all Government Bills. It considers, therefore, questions of drafting, purely legal questions such as the method of enforcement of provisions, the technical effect of the Bill upon Crown property, and so on. Questions of policy are not discussed, but must be reserved for the Cabinet. In the exercise of this function the committee is assisted by the Parliamentary Counsel to the Treasury and by such other officials as the ministers think fit to summon. In the second place, the committee recommends the Government business for the Session. It meets, therefore, at the beginning of the Session and, with the assistance of the Parliamentary Secretary to the Treasury and of such officials as may be summoned by ministers, it considers the Bills which might be produced during the Session, given the policy announced in the King's speech and the urgency of departmental Bills.

The committee is advisory only, and its conclusions and recommendations are embodied in the minutes of the committee, which are circulated to all members of the Cabinet. They are circulated, therefore, as Home Affairs papers and not as Cabinet papers, since there is no distinction, as there is with other committees, between the report and the minutes. But in due course the recommendations are placed on the Cabinet agenda. The examination of Government Bills in this way is believed to be useful. In particular it enables the law officers to discuss the legal aspects of the legislative proposals and to explain to their colleagues the legal and technical difficulties which arise. Agreed modifications and amendments may be introduced at this stage and difficulties avoided which would otherwise have involved considerable departmental correspondence and, perhaps, loss of time and Parliamentary embarrassment.

Other committees are appointed for specific purposes. This does

<sup>1</sup> See *post*, Chapter x.



not necessarily mean that the committee ceases to sit as soon as it has reported to the Cabinet. It is frequently asked to consider and report on or to take decisions on questions consequential upon the decision of the Cabinet. Suppose, for example, that the Board of Education desires to propose an important amendment of the law relating to Education, which will involve the voluntary schools, and therefore the various religious communities. The proposal will be made by means of a memorandum circulated to the Cabinet. The observations of the Chancellor of the Exchequer will probably be circulated at the same time. The questions involved being difficult, they will probably be referred to a committee. This Education Committee will prepare a report, which will be circulated to the Cabinet and, we will assume, will be approved by that body. But much will depend upon the actual provisions of the Bill. Accordingly, the Education Committee will be asked to supervise the drafting of the Bill. The Bill itself will be drafted in the Parliamentary Counsel's Office in collaboration with the officials of the Board of Education. It will then be presented in draft to the Education Committee, which will consider the political difficulties raised. These having been settled and the Bill amended, it will be brought before the Home Affairs Committee, where any drafting and legal difficulties will be discussed. At this point some other department, such as the Ministry of Health, may desire to raise certain questions. If these raise issues of policy, they will be brought before the Education Committee and there settled. Thus, the Bill which is ultimately brought before the Cabinet on the report of the Home Affairs Committee will often be an agreed measure, and much further discussion will be unnecessary.

The Secretary to the Cabinet or, as is in fact usually the case, the Deputy-Secretary, acts as secretary to all Cabinet Committees with the assistance of the Treasury Principal mentioned on page 188. Where, however, the question involved is of a technical nature, an official from the department most concerned will act as joint secretary. Documents are circulated to the committee as to the Cabinet, and minutes are kept. These minutes are rather fuller than are the minutes of the Cabinet. The report containing the committee's recommendations, when ap-

proved by the chairman of the committee, is circulated to the Cabinet as a Cabinet paper. It is for the Cabinet itself to reach decisions on the recommendations so submitted.

At every committee which considers serious departmental issues the ministerial heads of the departments concerned must necessarily be present. They alone are fully informed of the nature of the problem; they will have the responsibility of carrying out the decision to which the Cabinet may come on the recommendation of the committee. Since most questions of government involve financial considerations, it follows that the Chancellor of the Exchequer usually has more committee work than any other minister.

Again, when foreign affairs are disturbed, the Foreign Secretary will necessarily have much committee work in spite of the pressing demands of his own departmental questions. The Prime Minister himself will be chairman of many of the most important committees. One result of the Cabinet system is, therefore, that the burden of committee discussion falls primarily on ministers who are already oppressed with much departmental work. Also, they cannot substantially be relieved by the appointment to committees of ministers with less urgent departmental work or of ministers without portfolio. There are no doubt in every Cabinet ministers of wide experience possessing the ability to seize the issues of a complicated question of whose background they have no official knowledge. A minister without heavy departmental duties may be useful as chairman of a committee to consider an intractable inter-departmental question. Sometimes, too, a junior minister can take the place of the ministerial head of a department. But, speaking generally, Cabinet committees necessarily require the assistance of the members familiar with the questions to be discussed. Consequently, when a minister's departmental duties become heaviest his work on Cabinet committees also becomes heavy. Since a Cabinet may at a given time have as many as thirty committees in existence, and since as many as fifteen of these may involve financial questions and necessitate the presence of the Chancellor of the Exchequer or of the Financial Secretary to the Treasury, it can readily be understood that committee work may be

largely the cause of that pressure of Cabinet business which is so obvious in times of emergency or political difficulty.

The results of the committee system can be stated in general terms only. It can be assumed, however, that if a committee produces an agreed report subsequent Cabinet discussion is rarely necessary. If, on the other hand, the committee cannot reach agreement, the whole question is thrown open in the Cabinet. On one occasion recently a committee was agreed except for the chairman. The chairman having stated the view of the committee, proceeded to state his own view. Thereupon the Prime Minister emphatically asserted his agreement with the chairman, and after little more discussion the Cabinet accepted his point of view. It appears, however, that committee disagreements are rare. The committee contains the ministers primarily concerned. If they cannot find a compromise in committee, it is unlikely that they will be able to reach a compromise in Cabinet. But the whole process of Cabinet government implies compromise, and it is the purpose of a committee to find the formula in which that compromise can be stated.

The Cabinet takes decisions by a majority whenever it cannot reach an agreed conclusion. It appears that the practice of taking votes and deciding by a majority did not originate until 1880. The decision to arrest Dillon in 1881 was carried by Mr Gladstone's casting vote. Lord Granville, who was not present, later said that "he never knew numbers counted in the Cabinet before, and that it was absurd to count heads in assemblies in which there was such a difference in the contents of the heads".<sup>1</sup> (A criticism that applies to all counting of heads.) The question of the removal of the Duke of Wellington's statue from Hyde Park Corner in 1883 was decided by a show of hands. Sir Charles Dilke said that "it was the only subject upon which, while I was a member of it, I ever knew the Cabinet to take a show of hands".<sup>2</sup> This appears not to be correct, for Lord Granville told Mr Gladstone in 1886, "I think you too often counted noses in your last Cabinet",<sup>3</sup> and Lord Morley gives examples.<sup>4</sup>

<sup>1</sup> *Life of Sir Charles Dilke*, I, p. 370.

<sup>2</sup> *Ibid.* I, p. 528. Dilke was not in the Cabinet of 1881.

<sup>3</sup> *Life of Gladstone*, III, p. 5.

<sup>4</sup> *Ibid.*

In any case, the taking of votes is exceptional. It is said that on the Education Bill in 1901, the Cabinet divided several times, "a practice which large Cabinets have rendered unavoidable".<sup>1</sup> It was decided to restrict the Bill to secondary education by a vote of ten to eight.<sup>2</sup> Nevertheless, Lord Oxford and Asquith wrote: "It is not, or was not in any other Cabinets, in which I have sat, the custom (unless in exceptional cases not always of the first importance) to take a division."<sup>3</sup> It may be assumed that fewer divisions of opinion appeared in Conservative than in Liberal Cabinets. It is the general experience, however, that votes are rare. The debate is continued until agreement is reached. The Naval Estimates of 1913 were the main and often the sole topic of discussion at fourteen full meetings of the Cabinet.<sup>4</sup>

The Cabinet itself is a committee, and it comes to its conclusions in much the same way as other committees. That is, it talks around a subject until some compromise suggests itself. Only when there are fundamental divergencies does the majority override the minority. The problem of securing agreement is greater in the Cabinet, partly because of the fundamental importance of its decisions, and partly because, as will be explained presently, it is the duty of the dissenting minority either to resign or to support the decision of the majority. Resignations may entail the breaking up of the Cabinet and in addition, a party split. Great efforts are therefore made to secure agreement. Compromise is the first and last order of the day.

Disraeli once said that in his Cabinet of twelve members there were seven different opinions.<sup>5</sup> The problem is not merely that there may be divergent views of general public policy or of the effect of that policy on public opinion; frequently the Cabinet has to choose between rival experts.

From beginning to end [of the war of 1914-18] civilian ministers found themselves compelled to choose between rival and competing military plans, each of which had highly expert authority behind it, and to adjust whatever plan was chosen to the policy and strategy of

<sup>1</sup> Fitzroy, *Memoirs*, I, p. 63.

<sup>2</sup> *Ibid.* I, p. 67.

<sup>3</sup> *Fifty Years of Parliament*, II, p. 196.

<sup>4</sup> Churchill, *World Crisis*, I, p. 172.

<sup>5</sup> This was on the Russo-Turkish War in 1877: *Life of Disraeli*, II, p. 1066.

Allies... In whatever way the ministerial pack might be shuffled, it was not to be supposed that active and conscientious men who accepted responsibility for the results would remain mere spectators of the conflict, or refrain from expressing opinions which they held with conviction. Lord Kitchener is reported to have said after one of his differences with the Cabinet that it was "repugnant to him to have to reveal military secrets to twenty-three gentlemen with whom he was barely acquainted", but the twenty-three being charged with the ultimate responsibility could not reasonably be asked to accept the plea of military necessity as a ground for keeping them in ignorance of the facts.<sup>1</sup>

Yet the task of securing agreement is not so difficult as it sounds. A difference between two ministers or two departments can usually be settled by a private consultation or by arbitration by the Prime Minister. In the Cabinet the Prime Minister occupies a position of pre-eminence, varying in strength according to the weight of personality, which frequently enables him to impose a decision.<sup>2</sup> If, as may sometimes happen, agreement is reached among the more prominent Cabinet ministers, it may be assumed that the agreement of the Cabinet will, as a rule, follow.<sup>3</sup>

Above all, the Cabinet is usually composed of leaders of a single party. The Prime Minister is the leader of that party, and his twenty or so colleagues owe him a personal as well as a party allegiance.<sup>4</sup> They are at various stages of their political careers, and only a few have substantial personal prestige. They have a common party loyalty and, generally, a common political faith. It may be true, as Mr Lloyd George has said, that there is "no generosity at the top". There is, however, a tradition of appearing to be generous, partly at least because it is good

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, pp. 123-4.

<sup>2</sup> See *ante*, Chapter VIII, pp. 142-9.

<sup>3</sup> Another method of securing agreement is indicated in the following passage: "What really happens in the Cabinet is that...the Secretary of State for War brings forward his Estimates and then his right hon. friends bring forward their Estimates. They never criticise each other. There is a tacit understanding that they will always vote for each other's Estimates": 215 H.C. Deb. 5 s., 1039.

<sup>4</sup> For instance, most of his colleagues supported Peel in 1845 and 1846 though they had strong views about the Corn Laws. Cf. Greville, *Memoirs*, 2nd Series, II, p. 364.

policy. Moreover, it is difficult for an ambitious politician—and the most obstreperous minister is usually the most ambitious—to separate himself from his party. A dissenting minister who threatens to resign has to consider whether his presence is necessary to the Government. A minister who miscalculates—as when Lord Randolph Churchill “forgot Goschen”—may send himself into the political wilderness. A minister who resigns on the ground of disagreement must, if his political ambition is to be further realised, either form a new party or join the Opposition. Lord John Russell’s resignation in 1855 prevented him from again becoming Prime Minister until after Palmerston’s death. Lord Derby, Disraeli’s Foreign Secretary, became a Liberal. The Liberal Unionists struggled back into office under a Conservative Prime Minister. Mr Winston Churchill, after each tergiversation, had to wait for office. Other less eminent men have undergone political extinction.

In any case, office has its attractions. It is natural for a politician to hesitate before he consigns himself to the back benches. He must choose between his opinions and his prospects; usually, he forgoes the former. So, Tories who supported Peel against Catholic Relief and the repeal of the Corn Laws supported him in effecting both. Conservatives who cheered Disraeli’s attacks on Gladstone’s Reform Bill cheered him also when he “dished the Whigs”. Whigs who were Conservative in all but name supported Radical measures until Home Rule became the order of the day. Free-trade Liberals found special circumstances to justify protective duties. We need not always assume motives; but motives are commonly mixed.

#### § 6. *Coalitions.*

No such considerations strengthen a Coalition Government. Here there may be little personal and no party loyalty. The Cabinet has a plethora of eminence. There are rival policies as well as rival ambitions. “England”, said Disraeli, “does not love Coalitions.” The truth is that Coalitions do not love each other. Both Mr Gladstone<sup>1</sup> and the Duke of Argyll<sup>2</sup> have testified to the smoothness with which Lord Aberdeen’s

<sup>1</sup> *English Historical Review*, II, p. 288; *Life of Gladstone*, p. 495.

<sup>2</sup> *Autobiography and Memoirs*, I, p. 388.

Cabinet of 1852-5 functioned. The latter said: "I have been a member of every Liberal Cabinet that succeeded it for twenty-nine years, and I never saw any of them which worked more smoothly or with less individual friction." It may be noticed that it produced an amalgamation of Whigs and Peelites which had only been prevented before by Lord John Russell's "chalking 'No-Popery'" and running away. In any event, the Duke could not have been aware of the broadsides which Lord John Russell fired at Lord Aberdeen or the discussions between these two and Lord Clarendon.<sup>1</sup> Great Britain muddled into the Crimean War because the Cabinet was divided; and because it was divided it accepted compromises which led it inevitably nearer and nearer to war. The fleet was sent to the Dardanelles because some wanted offensive operations and some wanted no operations at all. The compromise was necessary to prevent the break-up of the Cabinet. It inevitably led to war, though it did not itself denote war.

The coalition of 1895 was not really a coalition at all. The Conservative Party was renewing its youth by an infusion of Whig men. Of the coalition of 1915 we have some graphic descriptions. Its members "were constantly looking over their shoulders to see whether they could carry their parties with them".<sup>2</sup> On the question of conscription, Mr Bonar Law informed Mr Asquith: "I believe that it is easier for you to obtain the consent of your party to general compulsion than for me to obtain the consent of my party to its not being adopted."<sup>3</sup> Mr Asquith could not close debate in the Dardanelles Committee because some members did not belong to his party.<sup>4</sup> Mr Winston Churchill was, no doubt, a prejudiced observer, but his remarks bear the stamp of credibility.

Whereas practically all the important matters connected with the war had been dealt with in the late Government by four or five ministers, at least a dozen powerful, capable, distinguished personalities who were in

<sup>1</sup> Cf. *Life of Gladstone*, I, p. 495, and Gladstone, "The History of 1852-60 and Greville's Latest Journals", *English Historical Review*, II, pp. 288-9. In any case, those who approved of the war approved on very different grounds: *ibid.* p. 289. See also Gordon, *Life of Lord Aberdeen*, ch. x.

<sup>2</sup> *Life of Lord Oxford and Asquith*, II, p. 211.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* II, p. 188.

a position to assert themselves had to be consulted. The progress of business therefore became cumbrous and laborious in the last degree, and though all these evils were corrected by earnest patriotism and loyalty, the general result was bound to be disappointing. Those who had knowledge had pasts to defend; those free from war commitments were also free from war experience. At least five or six different opinions prevailed on every great topic, and every operative decision was obtained only by prolonged, discursive and exhausting discussions. Far more often we laboured through long delays to unsatisfactory compromises.<sup>1</sup>

Again, "from the moment of the formation of the Coalition power was dispersed and councils were divided, and every military decision had to be carried out by the same sort of process of tact, temporising, and exhaustion which occurs over a clause in a keenly contested Bill in the House of Commons in time of peace".<sup>2</sup> Finally, "I was, and am, strongly of opinion that it would have been better to break up the Cabinet, and let one section or the other carry out their view in its integrity, than to preserve what was called the 'national unity' at the expense of vital executive action".<sup>3</sup>

Mr Lloyd George solved the problem by putting the Cabinet out of action for the duration of the war.<sup>4</sup> Though by 1919 the party lines of five years before had been all but obliterated, the revived Cabinet did not long survive the tumults of peace. But the "national unity" was restored in 1931 and a Coalition Government—this time called "National"—was again formed. Of this we know little save that on a most vital point its unity was maintained by an agreement not to be united. After the defection of the "independent" Liberals and Lord Snowden, there was nobody of outstanding personality who was not, in sympathy if not in affiliation, a Conservative.

<sup>1</sup> Churchill, *World Crisis*, II, p. 384.

<sup>2</sup> *Ibid.* II, p. 393.

<sup>3</sup> *Ibid.* II, p. 477. Cf. Lord Stanley in 1834: "Confidence in public men has been more shaken by coalitions than by all the acts of personal misconduct taken together": *Peel Memoirs*, II, p. 40. But this is a conclusion drawn from a completely different Constitution, that of George III.

<sup>4</sup> *Post*, pp. 235-8.



§ 7. *Cabinet Secrecy and Cabinet Minutes.*

The Cabinet deliberates in secret; its proceedings are confidential. The Privy Councillor's oath imposes an obligation not to disclose information; and the Official Secrets Acts forbid the publication of Cabinet as well as other official documents.<sup>1</sup> But the effective sanction is neither of these. The rule is, primarily, one of practice. Its theoretical basis is that a Cabinet decision is advice to the King, whose consent is necessary to its publication. Its practical foundation is the necessity of securing free discussion by which a compromise can be reached, without the risk of publicity for every statement made and every point given away.

A minister who resigns from the Cabinet usually desires to make an explanation in Parliament. Since this involves an explanation of Cabinet discussions, he must secure the King's consent. For this purpose he asks permission through the Prime Minister. Lord Melbourne objected in 1834 to the King's giving consent without consultation with the Prime Minister as "subversive... of all the principles upon which the Government of this country has hitherto been conducted".<sup>2</sup> When Lord Derby resigned, he asked permission to state his reasons, and permission was given. But four months later he returned to the subject. This, the Queen said, "is a most unusual and, she cannot but think, hardly constitutional course".<sup>3</sup> In reply to Lord Derby's explanation, General Ponsonby wrote: "Her Majesty expects that, whenever a Privy Councillor makes any statement in Parliament respecting proceedings in her Majesty's Council, the Queen's permission to do so should first be solicited, and the object of the statement made clear; and that the permission thus given should only serve for the particular instance, and not be considered as an open licence."<sup>4</sup> Lord Salisbury described this statement as "a valuable addition to Constitutional Law".<sup>5</sup>

<sup>1</sup> Mr Edgar Lansbury was fined in 1934 for publishing a memorandum submitted to the Labour Cabinet of 1929-31 by his father, Mr George Lansbury. Anson, *Law and Custom of the Constitution* (4th edition), II (1), p. 122.

<sup>2</sup> *Melbourne Papers*, pp. 215-16.

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 631-2.

<sup>4</sup> *Ibid.* II, p. 634.

<sup>5</sup> *Ibid.*

The rule was explained to the Cabinet by Mr Gladstone in 1880.<sup>1</sup> In 1886 Mr Gladstone interrupted Mr Joseph Chamberlain, who was indicating his reasons for resigning, by observing that he had not received the Queen's permission to disclose information on the matters then under discussion. Mr Chamberlain subsequently asked the Queen's permission, through Mr Gladstone. The Queen replied that in her opinion he has received ample permission before, and that he had not exceeded the permitted limits.<sup>2</sup>

Nevertheless, the rule is not always obeyed. In the first place, there comes a time when Cabinet proceedings pass into history. Full information is now available as to the proceedings of the nineteenth-century Cabinets, and only the absence of biographies of leading statesmen prevents us from having detailed knowledge of the Cabinet from 1900 to 1905. The particular importance of the events leading up to the outbreak of war, and the assumed necessity of showing that the British Government did not contemplate any "encirclement" of Germany and did its best to prevent war, has enabled the principal actors to state their versions of the progress of discussion of foreign affairs in the Cabinet of 1906 to 1914. Some have continued the story until 1918, though Mr Lloyd George's use of Cabinet memoranda has been criticised in Parliament.<sup>3</sup>

Secondly, the press is not always left entirely without guidance. It is known that during the war the representatives of the press were able to secure information from the Prime Minister's secretariat in the "garden suburb"; and it seems that on occasions since then the press has been enabled to "understand" the nature of the subject under discussion. There have in the past been periods when the press had its contributors or correspondents in the Cabinet.

Thirdly, it is difficult to prevent revelations of Cabinet discussions when they are matters of political controversy. After the resignation of

<sup>1</sup> *Ibid.* 2nd Series, III, p. 96; see also *Life of Gladstone*, III, p. 114.

<sup>2</sup> *Letters of Queen Victoria*, 3rd Series, I, pp. 100-5. Lord Salisbury in 1886 refused to allow Lord Randolph Churchill to publish his letters of resignation: *Life of Lord Randolph Churchill*, II, pp. 256-7.

<sup>3</sup> See the practice stated by Mr Baldwin: 238 H.C.Deb. 5 s., 2205-12. See also 83 H.L.Deb. 5 s., 551-2.

the Labour Government and the formation of the National Government in 1931, both ministers and ex-ministers disclosed the proposals upon which they had tentatively agreed and those upon which they had not been able to agree.

The taking of notes by any minister other than the Prime Minister was for long forbidden. Sir William Molesworth took notes in the Cabinet of Lord Aberdeen, and on one occasion Lord Granville refused to continue a statement until Molesworth laid down his note-book.<sup>1</sup> Lord Derby took notes in Lord Beaconsfield's Government, asserting that he saw no objection to temporary notes that were subsequently destroyed.<sup>2</sup> Both Lord Salisbury<sup>3</sup> and Mr Asquith<sup>4</sup> forbade the taking of notes. The result was that normally there was no record of Cabinet decisions except the Prime Minister's letter to the Sovereign.<sup>5</sup> Though a minister might have to order his department to put a Cabinet decision into action, he had no record of what the decision was. Sometimes, indeed, it was by no means certain what the Cabinet had decided. In 1876 it was not certain whether instructions for the Constantinople Conference had been approved.<sup>6</sup> In 1877 it was not certain whether it had been agreed that in certain circumstances no opposition should be offered to the Russian advance towards Constantinople.<sup>7</sup> In 1878 there was misunderstanding as to the effect of the discussion on the occupation of Cyprus.<sup>8</sup> In 1900 the publication of the Spion Kop despatches was due to a misunderstanding in the Cabinet. Some ministers, including Lord Salisbury, were under the impression that no action was to be taken. In consequence, Lord Salisbury expressed a doubt whether "our traditional practice of not recording Cabinet decisions is a wise one".<sup>9</sup> Lord Lansdowne said, "our decisions are not always very distinctly intimated to those who have to carry them out".<sup>10</sup> There was another dispute as to a Cabinet decision in 1903.<sup>11</sup>

<sup>1</sup> Duke of Argyll, *Autobiography and Memoirs*, I, p. 460.

<sup>2</sup> *Life of Disraeli*, II, p. 1136.

<sup>3</sup> *Life of Robert, Marquis of Salisbury*, II, p. 223.

<sup>4</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 197.

<sup>5</sup> See *post*, Chapter XI, pp. 264-5.

<sup>6</sup> *Life of Disraeli*, II, p. 967.

<sup>7</sup> *Ibid.* II, p. 1070.

<sup>8</sup> *Ibid.* II, pp. 1145-9.

<sup>9</sup> *Life of Lord Lansdowne*, p. 184.

<sup>10</sup> *Letters of Queen Victoria*, 3rd Series, III, pp. 541-2.

<sup>11</sup> *Life of the Duke of Devonshire*, II, p. 298. See also Sir Austen Chamberlain,

On important occasions, however, the Cabinet has drafted a formal minute. This was, apparently, a frequent practice under Lord Grenville and Fox.<sup>1</sup> But it has been adopted only occasionally since 1832.<sup>2</sup> In 1840 the Cabinet drafted a formal minute of advice to the Queen on the Eastern question, and minutes of dissent by Lords Clarendon and Holland were attached.<sup>3</sup> The purpose of this was, apparently, the same as the "agreement to differ" of 1932, namely, to keep the Cabinet together and yet to allow the dissentients to dissociate themselves from the treaty.<sup>4</sup> In 1871 the Queen insisted on a formal minute advising her to issue an order abolishing the purchase of Army commissions. The abolition had been provided for in a Bill in order that compensation might be given, but the House of Lords had struck out this provision. There was, however, power for the purpose in an Act of George III, and the Cabinet advised the Queen to exercise this power. Since such exercise involved overruling the House of Lords, the Cabinet recognised that the Queen was entitled to more formal advice than could be given in the usual letter from the Prime Minister.<sup>5</sup> In 1877 the Cabinet put into writing the answer to be given to Mr Gladstone's question on the Russo-Turkish War in the House of Commons.<sup>6</sup> In 1878 a formal minute, agreeing to the acquisition of a naval base in the Eastern Mediterranean, was drawn up by the Lord Chancellor and agreed by the Cabinet.<sup>7</sup> In 1910 the Cabinet, at the King's request, drafted a minute stating that advice would not be tendered for the creation of peers to overcome the opposition of the House of Lords

155 H.C.Deb. 5 s., 224. The following amusing letter was written by Lord Hartington's private secretary to Mr Gladstone's private secretary in 1882: "Harcourt and Chamberlain have both been here this morning and at my Chief about yesterday's Cabinet proceedings. They cannot agree about what occurred. There must have been some decision, as Bright's resignation shows. My Chief has told me to ask you what the devil was decided, for he be damned if he knows. Will you ask Mr G. in more conventional and less pungent terms?" quoted 86 H.L.Deb. 5 s., 529.

<sup>1</sup> *Peel Papers*, III, pp. 496-8; see also *Melbourne Papers*, p. 247.

<sup>2</sup> For the Cabinet minutes of 1832 advising the creation of peers, see *Taylor Papers*, pp. 342, 355.

<sup>3</sup> *Life of the Earl of Clarendon*, I, pp. 195-7.

<sup>4</sup> Greville, *Memoirs*, 2nd Series, I, p. 304.

<sup>5</sup> *Life of Gladstone*, II, p. 363; *Letters of Queen Victoria*, 2nd Series, II, pp. 152-4.

<sup>6</sup> *Life of Disraeli*, II, p. 1018.

<sup>7</sup> *Ibid.* II, pp. 1127-8.

unless the actual necessity arose.<sup>1</sup> The request for an undertaking from the Crown for a promise to create peers was embodied in a minute later in the same year.<sup>2</sup>

Since 1916, however, there have been formal Cabinet minutes. Unless the Cabinet otherwise directs—and there have been one or two occasions on which the Cabinet has so directed—the Secretary to the Cabinet or his Deputy is present at every Cabinet meeting. He takes no part in the discussion unless his opinion is asked on a particular point (such as a point of procedure), but merely makes a note of the Cabinet's decisions. This note is known officially as the Cabinet "Conclusions", though more popularly as the Cabinet "minutes". Under the War Cabinet, the minutes contained a full summary of the discussion. But this practice is no longer followed, and the minutes contain only enough information to enable the reader to understand the nature of the conclusions. It is, in fact, said to be an instruction to the Secretary in drafting Cabinet minutes to avoid any reference to opinions expressed by any individual and to limit the minutes as narrowly as possible to the actual decision agreed to. This is done by referring to and summarising the document or documents on which the Cabinet is asked to make a decision, by setting out the substance of any statement of fact made by a minister, by indicating the general nature of the arguments urged in the course of the discussion (without mentioning any names), and by setting out in full the decisions. Thus, the minute of a discussion as to the attitude of the British Government to a dispute between Arcadia and Ruritania might be in the following form:

#### 6. *Arcado-Ruritanian Dispute.*

The Cabinet considered a memorandum on the Arcado-Ruritanian Dispute by the Secretary of State for Foreign Affairs and a memorandum by the Secretary of State for Dominion Affairs on the attitude of the Dominions, from which it appeared that:

1. . . .

2. . . .

<sup>1</sup> *Life of Lord Oxford and Asquith*, I, p. 273.

<sup>2</sup> *Ibid.* I, pp. 296-7.

The First Lord of the Admiralty stated that... It was argued on the one hand that...; and on the other that....

It was agreed that:

1. ...
2. ...

These minutes are drafted by the Secretary on the basis of notes which he personally takes in the Cabinet. There can no longer be any doubt as to what the decisions are because, as Mr Austen Chamberlain said in 1922, if the decision were not clear the Secretary would ask, "What have I to record?" The minutes are drafted as soon as possible after the conclusion of the meeting. One copy is sent to the King "with Humble Duty" from the Prime Minister. Other copies are sent only to the Cabinet ministers. Subject to the authority of the Prime Minister, ministers who are not members of the Cabinet but who are concerned in the subject-matter of particular conclusions receive extracts from the minutes relating to those conclusions. The Lord Chancellor is responsible for communicating to the law officers such decisions as concern them, subject to consultation with the Cabinet at the time the decision is taken, or subsequently with the Prime Minister if he deems necessary. It is understood that the Chancellor of the Exchequer communicates to the Financial Secretary to the Treasury decisions on questions of finance with which the Financial Secretary may be concerned.

Great care is taken to ensure the secrecy of the Cabinet minutes. The minimum staff is employed on their reproduction and all notes are destroyed as soon as they are transcribed. The copies are sealed at once in special envelopes addressed to the ministers entitled to receive them. These envelopes are locked in the Cabinet boxes, which are then delivered by messengers to the ministers to whom they are addressed. A record copy is kept in the Cabinet Office under the immediate control of the Secretary.

It was formerly open to Cabinet ministers to take away with them, on their resignation, their copies of Cabinet minutes and memoranda. Some of the members of the War Governments made great use of them in their memoirs. The Cabinet decided in 1934 that they

would return their documents, and they asked former ministers to do the same. If this precedent is followed, the only Cabinet minutes available for future historians, if any, will be the set kept in the Cabinet Office. Mr Lloyd George suggested in 1932 that where a minister or ex-minister published a one-sided account of a transaction, other ministers ought to be able to publish the whole; and he gave as one example the partial disclosures of 1931.<sup>1</sup> He admitted that it was open to the minister or ex-minister to ask the King's permission, but he added: "As anyone who knows the Constitution will understand, that really means going to the Prime Minister. The Sovereign is constitutionally bound to take the advice of his chief Minister, and therefore if the chief Minister, who is—I will not say more or less implicated—he is bound to be more or less partial in the matter—gives advice to the contrary, then the person who is damnified, as it were, by the partial disclosure has no remedy at all."<sup>2</sup> The suggestion was not approved, and the obligation of secrecy continues to apply to Cabinet documents.

◀The presence of the Secretary in the Cabinet has involved a definite breach in the old tradition that only Privy Councillors ought to be present in the Cabinet.<sup>3</sup> Lord Oxford and Asquith has described the formality of Cabinet sessions. "No stranger (unless specially summoned to give information on a particular matter) was ever admitted; and when a message came from outside the door was always opened and shut by a minister. No food or drink was allowed, except some hard biscuits which were believed to date from the time of Pitt, and some plain water. Smoking was strictly tabooed. In the matter of seating there was no order of precedence, but each minister always occupied the same place."<sup>4</sup> It is stated in the 1935 edition of a standard text-book: "It might be questioned whether a meeting can be regarded as a meeting of the Cabinet while a person is present who is under no obligation to secrecy."<sup>5</sup> ◀Perhaps civil servants are regarded as under an obligation to

<sup>1</sup> *Ante*, p. 210.

<sup>2</sup> 273 H.C. Deb. 5 s., 1301 (1932).

<sup>3</sup> For the old practice, see 143 Parl. Deb. 4 s., 863.

<sup>4</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 196.

<sup>5</sup> Anson, *Law and Custom of the Constitution* (4th edition), II (1), p. 123.

secrecy;<sup>1</sup> but it is certain that ministers who are not Privy Councillors sometimes attend. Naval and military officers, civil servants, junior ministers, and others, were frequently present at the meetings of the War Cabinet. From December, 1916, to December, 1917, no less than 248 persons other than members of the War Cabinet or its Secretariat attended the meetings of the War Cabinet.<sup>2</sup> "Almost all its meetings are attended by the ministers [i.e. of the departments] and their chief departmental officials concerned. The majority of the sessions of the War Cabinet consist, therefore, of a series of meetings between members of the War Cabinet and those responsible for executive action.... Ministers have full discretion to bring with them any experts, either from their own departments, or from outside."<sup>3</sup> This practice is not followed by the post-war Cabinets, but there is no reason whatever why the Cabinet should not discuss a question with any person who may be able to render assistance. The pre-war precedents were not conclusive,<sup>4</sup> and the question may now be regarded as settled. The rule was correctly stated in 1915 by Sir Almeric Fitzroy: "It is no doubt true that the Prime Minister can command the attendance of anyone whose advice is required by the Cabinet, but no one attends as a Cabinet Minister except as one of His Majesty's servants, whose advice is needed by the Sovereign."<sup>5</sup>

The Secretariat is not in any sense an advisory body. It is not a planning commission. It does not make recommendations. It does not interfere with departmental responsibility. A member of the Secretariat of the War Cabinet has said: "It has been suggested that the Secretariat interfered with the responsibility of the departments; that the Secretariat issued statements which should have been issued by departments; that the Secretariat put forward and used their position to push forward ideas of their own; that, in fact, they usurped whatever they could in the way of departmental powers. Nothing could be

<sup>1</sup> Civil servants as well as ministers are of course within the Official Secrets Acts.

<sup>2</sup> *The War Cabinet, Report for the Year 1917*, C. 9005/1918, p. 1.     <sup>3</sup> *Ibid.*

<sup>4</sup> *Peel Memoirs*, II, p. 51; 143 *Parl. Deb.* 4 s., 863; Fitzroy, *Memoirs*, I, p. 242.

<sup>5</sup> *Ibid.* I, p. 600.



further from the truth.”<sup>1</sup> One of the three rules<sup>2</sup> laid down by Colonel Hankey was that the Secretariat was not to interfere with the responsibility of the departments. “If, in the course of our secretarial work, ideas occurred to us, we were to communicate them to the responsible departments. In no case, as far as I can remember, was independent action taken by the Secretariat.”<sup>3</sup>

### § 8. *The Execution of Cabinet Decisions.*

On the basis of the documents submitted, and as a result of the discussions among its members, the Cabinet comes to a conclusion. Two things follow. First, the decision is carried out by the departments. Secondly, the members of the Cabinet, and the junior ministers who accept the decision, may be called upon to defend it.

The decisions of the War Cabinet were communicated by the Cabinet Office to the departments affected. This practice is no longer followed. Each minister concerned is reminded of the Cabinet decision by the receipt of the draft minutes, or, in the case of the ministerial head of a department who is not in the Cabinet, by the receipt of an extract from the minutes. No other intimation is given, and ministers are personally responsible for making such communications as they deem necessary to their respective departments. But the decision of the Cabinet is binding upon all persons concerned in government.

Even a Commander-in-Chief in the field is subject to orders; he can, for instance, be ordered to supersede a general.<sup>4</sup> Similarly, a Cabinet decision may change the policy of the Government of India. As Lord Morley wrote to the Governor-General: “The Government of India is no absolute or independent branch of Imperial Government. It is in every respect answerable to the Cabinet, as every other department is, and if the Cabinet decides... that ends the matter.”<sup>5</sup> And again: “His

<sup>1</sup> Clement Jones in “The War Cabinet Secretariat”, *Empire Review*, January, 1924, p. 71.

<sup>2</sup> The others were: (1) not to issue statements to the press or give interviews to journalists; and (2) not to laugh at the jokes made by ministers, though a smile was permissible: *ibid.*

<sup>3</sup> “The War Cabinet Secretariat”, *Empire Review*, January, 1924, p. 71.

<sup>4</sup> *Letters of Queen Victoria*, 3rd Series, III, pp. 525-6.

<sup>5</sup> Morley, *Recollections*, II, p. 308.

Majesty's Government have determined on their course, and it is for their agents and officers all over the world to accept it."<sup>1</sup>

Sometimes, however, a change of circumstances or some other reason may make it necessary for a minister, preferably in consultation with the Prime Minister, to modify the application of a Cabinet decision. In 1880 the Cabinet approved draft instructions to the ambassador at Constantinople. Sir Charles Dilke persuaded Lord Granville to strike out a paragraph on his own responsibility.<sup>2</sup> The action of the Foreign Office in 1914 was constantly in advance of the Cabinet. But a minister must not exercise this power to defeat the policy of the Cabinet. Such an act led to the dismissal of Palmerston in 1831.<sup>3</sup>

### § 9. *Collective Responsibility.*

For all that passes in Cabinet (said Lord Salisbury in 1878) each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues.... It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld, and one of the most essential principles of parliamentary responsibility established.<sup>4</sup>

A minister who is not prepared to defend a Cabinet decision must, therefore, resign. Of such resignations there are many examples. Lord Palmerston resigned in 1853 because he could not agree to Lord John Russell's Reform Bill, though he afterwards withdrew his resignation. Lord John Russell resigned in 1855 because he agreed with Roebuck's motion and was not prepared to join with the Cabinet in resisting it. Mr Gladstone and other Peelites resigned in the same year because they would not accept Roebuck's adjourned motion. General Peel and three others resigned in 1867 because they could not support Disraeli's Reform Bill. Sir Herbert Samuel and other Liberals, and Viscount Snowden, resigned in 1932 because they could not support the Ottawa Agreements.

<sup>1</sup> *Ibid.* II, p. 178.

<sup>2</sup> *Life of Sir Charles Dilke*, I, p. 327.

<sup>3</sup> *Ante*, pp. 157-60.

<sup>4</sup> *Life of Robert, Marquis of Salisbury*, II, pp. 219-20.

✧ If a minister does not resign he is "responsible." The nature of that responsibility is studied elsewhere.<sup>1</sup> From the minister's point of view it means only that he must vote with the Government, and speak in defence of it if the Prime Minister insists, and that he cannot afterwards reject criticism of his act, either in Parliament or in the constituencies, on the ground that he did not agree with the decision. The story is told of Lord Melbourne that after his Cabinet had come to a conclusion on the Corn Laws he said, "By the bye, there is one thing we haven't agreed upon, which is, what are we to say? Is it to make our corn dearer, or cheaper, or to make the price steady? I don't care *which*: but we had better all be in the same story."<sup>2</sup> That puts the matter precisely; they must all tell the same story.

Questions are sometimes left as "open questions", so that any minister may vote or speak as he pleases. Thus, the question of the repeal of the Corn Laws was regarded as an open question by the Cabinet of 1831-4, though subsequently this was disputed.<sup>3</sup> Lord John Russell declared in 1839 that though it might be convenient for a Government to have many open questions, it was not "for their honour and glory". Nevertheless, honour and glory had to give way to convenience, and on Mr Grote's motion in favour of the ballot Lord John Russell, the leader of the House, spoke against, and seven ministers voted for it.<sup>4</sup> In 1841, with the same Government, Lord Melbourne "declared before God that he considered leaving the whole agricultural interest without protection the wildest and maddest scheme that had ever entered into the imagination of man", but the leader of the House of Commons and nine other ministers voted for the repeal of the Corn Laws.<sup>5</sup>

The Whig Government of 1839 to 1841 was particularly weak, and was in office only because of the Queen's objection to changing her Ladies in 1839. It would be impossible for any modern Government to leave open such a question as that of the Corn Laws. It is not a question

<sup>1</sup> See *post*, Chapter XIV.

<sup>2</sup> *Life of Lord John Russell*, I, p. 369.

<sup>3</sup> *Parl. Deb.* 3rd Series, vol. 45, cols. 585-6.

<sup>4</sup> *Life of Lord John Russell*, I, pp. 324-6. (See also *Lord Melbourne's Papers*, p. 399.)

<sup>5</sup> *Ibid.* I, p. 367.

merely of "honour and glory"; it is, rather, a question of public opinion. A Government that cannot make up its mind on a fundamental issue ought not to be the Government and will be so regarded in the constituencies. Its fall may be regarded as imminent.

In 1873 the extension of the county franchise was regarded as an open question,<sup>1</sup> but at the dissolution not long afterwards the Opposition party secured a majority for the first time since 1846. In 1905 the Cabinet could not agree on Mr Arnold-Forster's scheme for dealing with the militia, and the minister was allowed to explain his views to the House of Commons as being only his personal opinions.<sup>2</sup> But the majority that supported this Government was wiped out at the general election shortly afterwards. In the Liberal Government of 1908 to 1914, the enfranchisement of women was an open question;<sup>3</sup> and it was again left open in 1917.<sup>4</sup> In 1928 the revision of the Prayer Book was regarded as a non-political question, which did not require decision by the Cabinet.<sup>5</sup> It is not uncommon for the House of Commons to be left to a "free vote" on private members' Bills and resolutions which do not raise political issues.

In 1932 the Cabinet adopted the strange device of an "agreement to differ". The financial difficulties of 1931 led to the formation of a coalition or "National" Government supported by the Conservative and Liberal Parties and a few members of the Labour Party.<sup>6</sup> An electoral arrangement was made at the ensuing general election, as a result of which, with a few exceptions, supporters of the National Government were not opposed by other supporters of that Government. The Conservative Party asserted that tariff duties were a solution of the difficulties; but as the members of other parties would not agree, each candidate was left to advocate his own remedies, and the Government as a whole adopted no policy, but asked for a "doctor's mandate" to make a diagnosis and prescribe such remedies as it thought fit. After the

<sup>1</sup> *Life of Lord Ripon*, II, pp. 376-8.

<sup>2</sup> *Memoirs of Arnold-Forster*, pp. 262-3; Lee, *King Edward VII*, II, p. 205.

<sup>3</sup> *Ibid.* II, p. 653.

<sup>4</sup> *Life of Lord Curzon*, III, pp. 191-3.

<sup>5</sup> Taylor, *Jix—Viscount Brentford*, p. 253.

<sup>6</sup> *Ante*, pp. 38-9.

election, a Cabinet Committee proposed a general tariff. Four members of the Cabinet disagreed and proposed to resign. The Prime Minister saw them privately and pleaded that their resignation would make his position "embarrassing and humiliating". He suggested that their resignation might be averted by conceding to them the liberty to express their dissent publicly. "This was considered, but dismissed as impracticable and Gilbertian." But when the suggestion was made at the Cabinet the dissenting ministers, after some hesitation, agreed on condition that they were to be free to vote and speak against any tariff proposals, that members of Parliament were to have the same liberty, and that the Whips were not to exert influence to persuade members to vote for tariff proposals.

The official announcement was then made in the following terms:

The Cabinet had had before it the Report of its Committee on the Balance of Trade, and after prolonged discussion it had been found impossible to reach a unanimous conclusion on the Committee's recommendations.

The Cabinet, however, is deeply impressed with the paramount importance of maintaining national unity in the presence of the grave problems now confronting this country and the whole world.

It has accordingly determined that some modification of usual Ministerial practice is required, and has decided that Ministers who find themselves unable to support the conclusions arrived at by the majority of their colleagues on the subject of import duties and cognate matters are to be at liberty to express their views by speech and vote.

The Cabinet being essentially united in all other matters of policy believe that by this special provision it is best interpreting the will of the nation and the needs of the time.<sup>1</sup>

This decision was attacked in both Houses, but, being supported by the Government majorities, it was acquiesced in, and the dissentient ministers and their supporters spoke and voted against the Government. The question was not left open. It was decided by the Cabinet, and the Whips were put on. The procedure was not, therefore, in accordance with precedent. Logically, there is something to be said in its favour. It cannot be expected that a body of able ministers can agree

<sup>1</sup> Snowden, *Autobiography*, II, pp. 1010-12.

about all questions all the time. Particularly is this so with a Coalition Government. Frequent resignations involve frequent party splits, and party splits lead to short and weak Governments which in turn lead to distrust of the democratic system, and thence, to the fascism which is fundamentally inconsistent with British ideas of Government. Yet this argument, logical as it seems, is fallacious. Both logic and experience show that, under the party system, resignations need not be frequent.

A Cabinet that is agreed upon fundamentals can compromise upon incidentals. A party Cabinet is normally agreed on fundamentals; if it is not, as in 1845 and 1885, the time has come for a new alignment of parties. Coalitions, unless they are merely part of the process of remoulding party alignments, are necessarily unprincipled. The party system, as the fascists know, is the real enemy of fascism. Party Governments are strong Governments. An "agreement to differ" in order to maintain a coalition is an attempt to break down the party system and to substitute Government by individuals for Government by political principles. No harm was done by the precedent of 1932 provided that it is not regarded as a precedent.<sup>2</sup> The dissenting ministers, having swallowed the camel of a general tariff, strained at the gnat of imperial preference and resigned within eight months. The position of the Prime Minister, presumably, was no longer "embarrassing and humiliating", for he held it for nearly three years longer.

(Cabinet ministers are expected not merely not to oppose a Cabinet decision but also to support it.) Mr Gladstone in the Cabinet of 1868-74 strongly criticised the absence of a minister from a division. "I should not act frankly by you if I did not state it, without hesitation, as a general and prospective proposition, that, without reference to the likelihood or unlikelihood of defeat, upon motions which must from their nature be votes of confidence, [there can] be but one rule for the members of the Government, and that is to give the votes themselves which at the same time the Government with less strong title is asking

<sup>1</sup> See *ante*, pp. 205-207.

<sup>2</sup> Lord Hailsham, who is believed to have proposed the "agreement to differ", said: "I justify it to myself and, I hope, your Lordships' House, as an exception to a very sound constitutional principle which can only be justified by exceptional circumstances": 83 H.L. Deb. 5 s., 551-2.

from the members of their party.”<sup>1</sup> This does not imply, of course, that a minister may not “pair” with a member of the Opposition in accordance with the usual practice.

The obligation on ministers not in the Cabinet is not, apparently, so strong. They have, as Mr Gladstone said, “only a secondary and derivative share in the higher responsibilities”.<sup>2</sup> In 1838 Lord Charles Fitzroy, the Vice-Chamberlain, was dismissed from his post for voting against the Government.<sup>3</sup> In 1856 the Queen asked Lord Palmerston to “make it quite clear to the subordinate members of the Government that they cannot be allowed to vote against the Government proposal about the National Gallery to-morrow, as she hears that several fancy themselves at liberty to do so”.<sup>4</sup>

But failing to vote in favour of a proposal is not so heinous an offence as voting against a proposal. In 1881 Mr Gladstone wrote to the Queen, in connection with the failure of Mr Bright, Mr Chamberlain and Sir Charles Dilke to vote for the Government’s proposal for a memorial for Lord Beaconsfield, “as regards members of the Government not in the Cabinet, I think a single case of absence, in circumstances where individual votes were unimportant, would not according to usual practice be taken account of. *In strictness*, however, leave ought to be asked. Undoubtedly members of the Cabinet are bound to vote in every case—apart from accidental absences.”<sup>5</sup>

In 1882 Sir Charles Dilke (Under-Secretary at the Foreign Office) and Mr Fawcett (Postmaster-General) did not vote for the proposal to grant Prince Leopold an annuity on his marriage. Mr Gladstone then wrote:

Questions relating directly to the Sovereign, and involving money, are questions of importance, and still more of delicacy; and of risk: for on these questions serious opposition might entail consequences worse than defeat. This being so, it is necessary on all such subjects for the Government to rally its independent supporters to the best of its ability.

<sup>1</sup> *Life of Gladstone*, II, p. 418; see also *ibid.* II, p. 419.

<sup>2</sup> Gladstone, *Gleanings*, I, p. 224.

<sup>3</sup> Greville, *Memoirs*, 2nd Series, I, p. 86.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, III, p. 249.

<sup>5</sup> Guedalla, *The Queen and Mr Gladstone*, II, p. 156.

But no call can be forcibly made upon the independent supporters of a Government in such a case, unless the official servants of the Crown vote uniformly and steadily for the grant proposed. The Queen is therefore entitled to require their votes: and her Majesty is believed by Mr Gladstone to take her stand upon this unquestionable title.<sup>1</sup>

He also wrote that if there was any reason to apprehend repetition of the act, "precautions ought to be taken on a future occasion".<sup>2</sup> Lord Granville wrote to Dilke on the same occasion: "The Queen appears to me to have a *prima facie* right to complain of any of her servants refusing to support a Government measure which she and the administration think necessary for her comfort and position. But if you stated to the Prime Minister on taking office that you did not intend to vote for these grants, your responsibility ceases."<sup>3</sup>

In 1883 Sir Charles Dilke, who was now in the Cabinet, Mr Fawcett and Mr L. Courtney abstained from voting with the Government and against a women's suffrage amendment to the Reform Bill. Lord Hartington told Dilke that his position was different because he was a party to the decision of the Cabinet, and "custom binds the minority in the collective decisions of her Majesty's servants".<sup>4</sup> But Dilke remained in the Cabinet.

The strict party discipline of the present century and the practice of "refusing the Whip" to party members who consistently oppose the Government have perhaps weakened the position of a junior minister who does not agree with Cabinet policy. Though there must clearly be exceptions, it seems that a Prime Minister would normally require a junior minister to vote or pair with the Government. The case is not so strong where the minister is a peer and is not at the moment called upon for a decision. When Lord Cork proposed to resign over Home Rule in 1886, Mr Gladstone said that he did not conceive it to be "sound political doctrine that members of a Government, not in the Cabinet, and not in the House where action has been taken, should give effect to their views by resignation".<sup>5</sup>

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 291.

<sup>2</sup> Guedalla, *The Queen and Mr Gladstone*, II, p. 183.

<sup>3</sup> *Life of Sir Charles Dilke*, I, pp. 423-4.

<sup>4</sup> *Ibid.* II, p. 9.

<sup>5</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 103.



The duty of a minister is not merely to support the Government but to refrain from making any speech or to do any act which may appear to implicate the Government. The Prime Minister or the leader of the House of Commons, or even an individual minister, must on occasions take decisions without Cabinet sanction.<sup>1</sup> But this does not mean that he may reverse a Cabinet decision without just cause or branch out into new lines of policy without prior Cabinet consent. Lord Derby re-proved Mr Disraeli in 1858 for altering the India resolutions without the Cabinet's consent.<sup>2</sup> In 1878 Mr Disraeli, in his turn, re-proved the next Lord Derby for making a speech contrary to Cabinet policy.<sup>3</sup>

The duty of the minister in respect of speeches was stated by Lord Palmerston in a letter to Mr Gladstone in 1864:

A member of the Government when he takes office necessarily divests himself of that perfect freedom of action which belongs to a private and independent member of Parliament, and the reason is this, that what a member of the Government does and says upon public matters must to a certain degree commit his colleagues, and the body to which he belongs if they by their silence appear to acquiesce; and if any of them follow his example and express as publicly opposite opinions, which in particular cases they might feel obliged to do, differences of opinion between members of the same Government are necessarily brought out into prominence and the strength of the Government is thereby impaired.<sup>4</sup>

Mr Gladstone gave the same reason in 1883.<sup>5</sup>

Nevertheless, ministers, and especially Prime Ministers, have sometimes claimed or exercised a wider liberty. Lord John Russell in 1839 announced his views on the Corn Laws before the Cabinet decision; though ultimately the Cabinet left it as an "open question".<sup>6</sup> In 1850 Lord John Russell, as Prime Minister, issued his letter to the Bishop of

<sup>1</sup> See *ante*, pp. 167-8, 196-8.

<sup>2</sup> *Life of Disraeli*, I, pp. 1538-9.

<sup>3</sup> *Ibid.* II, p. 1885.

<sup>4</sup> Guedalla, *Gladstone and Palmerston*, p. 288; see also *ibid.* pp. 326, 327.

<sup>5</sup> *Life of Gladstone*, III, pp. 113-14.

<sup>6</sup> *Peel Papers*, II, pp. 380-2; *Life of Lord John Russell*, I, pp. 324-6; and see *ante*, p. 218.

Durham on the Catholic hierarchy without consulting the Cabinet.<sup>1</sup> In 1852 Sir William Molesworth retained the right to advocate the ballot, though he was in the Cabinet.<sup>2</sup> In 1867 Mr Disraeli, as leader of the House of Commons, agreed to introduce a Reform Bill instead of resolutions without consulting the Cabinet, and subsequently accepted the Liberal amendment to abolish compounding for rates without consultation.<sup>3</sup>

Mr Chamberlain in the Government of 1880 to 1885 demanded a greater liberty than Mr Gladstone was prepared to grant. In 1883 Mr Gladstone wrote: "Though speech cannot universally be confined by a minister within the limits of action to which he has conformed, yet declarations tending to place him markedly in advance or in arrear of his colleagues on subjects of high politics, or otherwise delicate, should be made as rarely and reservedly and, if I may say so, as reluctantly as possible."<sup>4</sup> In reply to a complaint by the Queen in the following year, Mr Gladstone said: "As all Cabinet ministers are in an important sense equals, and all members of the House of Commons have a representative as well as an official character to sustain, it is but a limited and rare power that Mr Gladstone's office allows him to claim."<sup>5</sup> Later he said: "I have no general jurisdiction over the speeches of my colleagues, and no right to prescribe their tone and colour. When they offend against an assurance which with their authority I have given to the Queen, they then afford me a title to interfere upon which I have been, I hope, not unduly slow to act."<sup>6</sup> To this the Queen replied: "The Queen thinks, and maintains that the Prime Minister has and ought to have that power, and that former Prime Ministers did exercise it." Mr Gladstone's answer was, in substance, an acceptance of the obligation:

Your Majesty is well aware that there is no code on record from which he [Mr Gladstone] may learn the powers of his office in such matters, and he has formed his estimate simply according to such knowledge as

<sup>1</sup> *Later Correspondence of Lord John Russell*, I, p. 46.

<sup>2</sup> *Life of Sir James Graham*, II, p. 204.

<sup>3</sup> *Life of Robert, Marquis of Salisbury*, I, pp. 227, 268; *Life of Disraeli*, II, pp. 275-6.

<sup>4</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 433-5.

<sup>5</sup> Guedalla, *The Queen and Mr Gladstone*, II, p. 292.

<sup>6</sup> *Ibid.* II, p. 294; see also *Letters of Queen Victoria*, 2nd Series, III, pp. 526-8.

he has gathered under the heads of the Cabinets in which he has served. As he would be very sorry to exaggerate the rights appertaining to his office, so he would deem it a serious offence knowingly to allow any of them to fall into abeyance. He does not doubt that there are many cases in which the Prime Minister can interfere, both as to acts and language: for instance cases which affect duty to the Crown, or cases where a minister undertakes to commit his colleagues.

In the case then under discussion, however, he did not think he could intervene.<sup>1</sup>

Mr Chamberlain and Sir Charles Dilke agreed in 1885 on the right of ministers to say what they pleased on issues of the future as distinct from current Cabinet questions, and the former inspired the famous *Radical Programme* which was considerably in advance of the programme of the Cabinet, in which the Whigs were still strong.<sup>2</sup> Mr Chamberlain explained to Mr Gladstone his reasons:

Popular government is inconsistent with the reticence official etiquette formerly imposed on speakers and which was easily borne as long as the electorate was a comparatively small and privileged class, and the necessity of consulting it at meetings infrequent and limited. Now the platform has become one of the most powerful and indispensable instruments of government, and any ministry which neglected the opportunities offered by it would speedily lose the confidence of the people.<sup>3</sup>

The necessity for securing his colleagues' agreement was a restriction too heavy for Mr Chamberlain's ambition. So long as he expected the reversion of the Conservative leadership he kept his ideas to himself. After Mr Balfour's appointment, however, he again decided to force the pace and raised the question of tariff reform. No conclusions being reached, Mr Chamberlain began a platform campaign. The Cabinet thereupon agreed upon an inquiry, and it was decided that while it was proceeding no public speeches should be made. Mr Balfour stated that though a Prime Minister was responsible for the action of the Cabinet, he was not responsible for the expression of individual opinions.<sup>4</sup>

In 1896 Mr Balfour in the House of Commons accepted an amendment to the Education Bill. Sir John Gorst, who had been in charge of

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 526-8.

<sup>2</sup> *Life of Joseph Chamberlain*, I, pp. 559-62.

<sup>4</sup> *Life of the Duke of Devonshire*, II, pp. 301 *et seq.*

<sup>3</sup> *Ibid.* I, p. 563.

the measure, had already opposed the amendment, and when the Cabinet came to discuss the position, it was realised that the amendment would make the Bill unworkable, and it was withdrawn.<sup>1</sup> Sir Henry Campbell-Bannerman followed Mr Balfour's example. He accepted the principle of a Labour Party Bill to exempt trade unions from liability for torts although the Cabinet had already decided against it.<sup>2</sup> Similarly, he accepted an amendment to include domestic servants within the scope of the Workmen's Compensation Bill although ministers and law officers had resisted the Bill up to the Report stage.<sup>3</sup>

Mr Lloyd George made his famous Mansion House speech on the Algeciras crisis in 1911 after consulting the Prime Minister and the Foreign Secretary, though without consulting the Cabinet. In 1916, however, he laid down the policy of "the Knock-out Blow" in an interview with an American journalist without consulting anybody, and Sir Edward Grey protested.<sup>4</sup> It appears that Mr Baldwin, as Prime Minister, raised the question of protection without consulting the Cabinet.<sup>5</sup> In 1927 Sir William Joynson-Hicks, speaking on a private member's Bill with the Prime Minister beside him, startled the House by stating that the Cabinet would introduce a Bill to reduce the age at which women were entitled to the franchise. The Cabinet had taken no such decision, and it is said that most of its members were against the proposal. Nevertheless, the Cabinet felt bound to support the Home Secretary.<sup>6</sup>

These precedents are inconclusive. It may be said, first, that the Prime Minister is frequently in a position to pledge his colleagues' support, because the only alternative is his own resignation. Secondly, a minister should not announce a new policy without Cabinet consent; but, if he does, the Cabinet must either support him or accept his resignation. Thirdly, a minister ought to be chary about expressing personal opinions about future policy except after consultation; and if the circumstances are such as to pledge the Government, the Prime Minister has real cause for complaint. Any statement in advance of a Cabinet decision is dangerous to the stability of the Government.

<sup>1</sup> *Life of Sir Robert Morant*, p. 109.

<sup>2</sup> *Life of Sir Henry Campbell-Bannerman*, II, p. 278.

<sup>3</sup> *Ibid.* II, p. 280.

<sup>4</sup> Lloyd George, *War Memoirs*, II, pp. 856-7.

<sup>5</sup> *Life of Lord Cave*, p. 264. <sup>6</sup> *Life of the First Earl of Birkenhead*, II, pp. 291-2.

## CHAPTER X

# The Committee of Imperial Defence, the War Cabinet and the Economic Advisory Council

### §1. *The Committee of Imperial Defence before 1914.*

The defence of the country against possible invasion, the protection of the far-flung boundaries of the British dominions overseas, the maintenance of order in colonies, protectorates and mandated territories, and the use of armed forces for the fulfilment of treaty obligations, are among the most important functions which the Government has or may have to exercise. For these purposes there are three armed forces in a state of preparation for war; and, if war breaks out, they are rapidly expanded by voluntary enlistment or conscription. Indeed, in such a war as that of 1914 to 1918 all the energies of the Government may be directed towards bringing the war to a successful conclusion.

The three forces are under the control of separate ministers.<sup>1</sup> The problems which the three departments have to study are dependent upon the policy and action of the Foreign Office, the Colonial Office and the India Office. The action and policy of the British Government must be co-ordinated with those of the Governments of the Dominions, through the Dominions Office. The preparation of internal defence plans of a non-military kind—such as provision of shelter and anti-gas apparatus for the civil population—is the concern of the Home Office. It is therefore a task of the Cabinet to co-ordinate the action of at least eight departments. It is a task which is important in time of peace and fundamental in time of war. Yet experience both in the Crimean War and the Boer War showed that the Cabinet alone is not sufficient in time of peace; and the experience of the European War of 1914 to 1918 showed that its peace organisation is inefficient in time of war. In consequence a special committee, the Committee of Imperial

<sup>1</sup> Though there is now a Minister for the Co-ordination of Defence.

Defence, was established in December, 1902,<sup>1</sup> and from 1916 to 1919 the ordinary Cabinet system was superseded by the peculiar institution of the War Cabinet. These are worthy of a study not merely because of the important matters with which they are or were concerned, but also because they illustrate some of the difficulties of the ordinary Cabinet system.

The genesis of the Committee of Imperial Defence may be traced to the Hartington Commission of 1890.<sup>2</sup> In the same year Lord Salisbury set up a naval and military committee of the Cabinet under the presidency of Lord Hartington to study strategy. It had the services of a Foreign Office clerk, but it had no regular meetings and no records. It was reconstituted in December, 1902, after a memorandum by Lord Selborne.<sup>3</sup> The War Office Reorganisation Committee in 1904 recommended that the Committee should be made permanent and that it should have a secretariat. This recommendation was accepted by Mr Balfour, who reconstituted the Committee as the Committee of Imperial Defence. The Prime Minister was to be the only permanent member. But the persons in fact summoned were the Prime Minister, the Lord President of the Council, the Secretary of State for War, the First Lord of the Admiralty, the First Sea Lord, and the Commander-in-Chief, with the heads of the Naval and Military Intelligence Departments as joint Secretaries and a Foreign Office clerk to keep the minutes.<sup>4</sup> The Committee was to meet only when summoned.

Sir Henry Campbell-Bannerman continued Mr Balfour's system, but it seems that he recognised the necessity for full collaboration with the Foreign Office. Under his direction, the Committee began the process of setting up sub-committees to inquire into and report upon strategic questions, with power to call witnesses and to take down the evidence.<sup>5</sup> Thus the work of preparing for the war which was clearly not far off was undertaken in a scientific manner. Above all, the agreement with

<sup>1</sup> Though its formal constitution dates from 1904: see Sir M. Hankey, "The Origin and Development of the Committee of Imperial Defence", *Army Quarterly* (1927), p. 254.

<sup>2</sup> C. 5979, p. viii.

<sup>3</sup> Sir M. Hankey, *op. cit.* p. 255.

<sup>4</sup> *Ibid.* pp. 255-7; Fitzroy, *Memoirs*, I, p. 118.

<sup>5</sup> Some of these were standing sub-committees, viz. the Overseas Defence Committee, the Home Ports Defence Committee, Co-ordination Committee, and Air Committee: Sir M. Hankey, *op. cit.* p. 258.

France in 1904 was followed by technical discussions between French and British military experts. As a result of these discussions, the Committee authorised and approved plans for the support of French troops by a British expeditionary force in the event—which happened in 1914—or an attack by Germany upon Belgium. Mr Asquith saw that other departments, besides the service departments, were concerned, and he set up a Standing Sub-Committee, to be presided over alternatively by the First Lord of the Admiralty and the Secretary of State for War, and composed of representatives of all the departments likely to have urgent problems on the outbreak of war.

Lord Esher explained in 1912 that the Committee had considered the following matters, among others: aerial navigation, the strategical aspects of the Forth and Clyde Canal, oversea transportation of reinforcements in time of war, the treatment of aliens in time of war, press censorship in war, postal censorship in war, trading with the enemy, wireless stations, local transportation and distribution of food supplies in wartime.<sup>1</sup> But these were obvious subjects. He did not reveal the complete—or almost complete—plans for assembling, transporting and reassembling at a fixed spot in Northern Europe six divisions of the British Army, nor the plan for passing a Defence of the Realm Act and the issue of Regulations thereunder so as to give immense powers to the Government on the outbreak of war. All these matters were included in the famous "War Book" which was prepared and from time to time revised and which was put into immediate operation as soon as the war broke out in 1914.<sup>2</sup>

The object of the pre-war Committee was precise and definite. It was to provide the plans necessary to defend the country and the Empire and to check the German invasion of Belgium which the British military experts (unlike the French) had foreseen with remarkable accuracy. General Henry Wilson, at the famous meeting of the Imperial Conference on August 23rd, 1911, gave the assembled statesmen a complete exposition of the probable German line of attack.<sup>3</sup> It is extremely un-

<sup>1</sup> Esher, *The Influence of King Edward*, p. 146.

<sup>2</sup> See Asquith, *The Genesis of the War*; and Sir M. Hankey, *op. cit.* pp. 258-9.

<sup>3</sup> *Diaries of Field-Marshal Sir Henry Wilson*, I, pp. 99-102.

likely that in the near future such a situation will recur. The League of Nations has made an immense difference, not only in making a war a little less certain, but also in making much less definite the nature of the aggression and the support available to meet it.

The association of certain ministers with the work of the Committee raised a new problem. For it involved a formal "inner Cabinet" which alone was aware of the detailed plans being prepared. The Cabinet was only theoretically in control, and there were among the ministers some jealousy and suspicion of the Committee's activities. Sir Almeric Fitzroy says that at the Lord President's dinner in March, 1914,

there was evidently some jealousy on the part of those Cabinet Ministers, who were not on the Committee, of the preponderant influence which membership gave to certain members in council... Lord Morley had to admit that the Committee was virtually supreme upon the issues with which it dealt. It had not made a war yet, but the experience of 1911 showed that it easily might. At that time [the Algecirais crisis] no Cabinets met, Lord Morley was in Scotland, and I received and acted upon instructions conveyed by the Secretary of State for War, with the assumed concurrence of the Prime Minister.<sup>1</sup>

It "made a war" five months later. For though it is unlikely that Great Britain would have kept out of the struggle if there had been no Committee of Imperial Defence, the fact of the "conversations" with the French military authorities, and above all the arrangements whereby the French Atlantic fleet was transferred to the Mediterranean, were important elements in the decision. Also, the military authorities having prepared plans were anxious to use them, and were even willing to use the Opposition to put pressure on the Government.<sup>2</sup>

On the other hand, when war broke out, the machinery of government was very different from what it had been in previous wars. It "worked with an amazing celerity, precision and completeness".<sup>3</sup> In

<sup>1</sup> Fitzroy, *Memoirs*, II, p. 539.

<sup>2</sup> For the proof that the "conversations" were regarded by France as committing Great Britain to war in 1914, see the statement of the French Ambassador to (Lord) Lloyd on August 1st, 1914: Chamberlain, *Down the Years*, p. 94. These "conversations" were mentioned in the original draft of the Unionist leaders' communication to the Government pressing the Government to declare war, though they were left out of the final draft: *ibid.* pp. 95, 99.

<sup>3</sup> Fitzroy, *Memoirs*, II, p. 560; see also Sir M. Hankey, *op. cit.* pp. 260-1.



spite of some changes of plan, four divisions (later increased to six) were moved across the Channel and assembled in France to meet the advance which the General Staff had foreseen. In England, the Defence of the Realm Act was passed, the Regulations drawn from their pigeon-holes and put into force, and the nation organised for war. Defects appeared only when the plans of the Committee had been carried out and the next steps had to be taken.

§2. *The Cabinet, 1914-19.*

On the outbreak of war, the ordinary departmental and Cabinet system continued. Mr Winston Churchill at the Admiralty and Lord Kitchener at the War Office, in consultation with the Prime Minister, accepted responsibility for day-to-day operations. Mr Lloyd George at the Treasury, Mr Walter Runciman at the Board of Trade, and other ministers in a less degree, took the measures necessary for fitting the ordinary peace mechanism to a state of war. There was no established Council, but there were sporadic consultations between the ministers concerned with inter-departmental questions.<sup>1</sup> The Government was engaged, in the main, in working out the plans of the Committee of Imperial Defence, and Cabinet consultation was necessary only for new departures. The Committee was available for "serious questions involving new departures in policy or joint strategic operations"; but no attempt was made in the early months of the war to draw a hard-and-fast line between an inner and an outer Cabinet.<sup>2</sup> Sir John French's announcement that he proposed to withdraw behind the Seine on September 1st was dealt with by a few members of the Cabinet, who agreed that Lord Kitchener should go to France with "Cabinet instructions".<sup>3</sup> So, on October 2nd, Sir Edward Grey, Lord Kitchener and Mr Churchill (the Prime Minister being away) decided to send the Naval Division to assist in the defence of Antwerp.<sup>4</sup> The Cabinet met at intervals of three to seven days and received a general survey of the position from Lord Kitchener, but the effective decisions had already been taken, and it could do no more than approve.

<sup>1</sup> Lloyd George, *War Memoirs*, I, p. 389.

<sup>2</sup> *Life of Lord Oxford and Asquith*, II, pp. 123-4.

<sup>3</sup> *Ibid.* II, p. 125.

<sup>4</sup> *Ibid.*

The Committee of Imperial Defence had necessarily restricted itself to the preparation of plans for the outbreak of war. Subsequent developments necessarily depended upon the military and naval situation. As soon, therefore, as the preliminary plans had been worked out, the need for closer central control and the preparations of plans for emergencies became evident. In October, Mr Asquith decided to convert the Committee of Imperial Defence into a "War Council", consisting of the Prime Minister, the Secretaries of State for War, India and Foreign Affairs, the Chancellor of the Exchequer, and the First Lord of the Admiralty, together with Mr Balfour (who had assisted the Committee of Imperial Defence) and the necessary experts. Lord Haldane and Sir Arthur Wilson were added in January, 1915. This Council took over the Committee's Secretariat, minutes were taken and, for the first time, formal notes of decisions were circulated to the departments concerned.<sup>1</sup> It was in fact the Committee of Imperial Defence under another name, the main difference being that it had more executive authority.<sup>2</sup>

"Broadly speaking the Cabinet kept under its own control all large decisions relating to the choice of objectives, finance, domestic questions arising out of raising men and munitions and supplies. Quite early in the day it decided that its own numbers were too big for some of these, and appointed small committees to take charge of them."<sup>3</sup> It rarely intervened in military matters, though on the 8th September it rejected the suggestion to send 20,000 to 30,000 troops to hold the road from Ostend to Antwerp.<sup>4</sup> After the battle of the Marne this decision was reversed by the ministers concerned, when Mr Churchill was sent to see to the defence of Antwerp and the maintenance of the line of retreat.<sup>5</sup> But the line between military and domestic questions was not easily drawn. The need for man-power and munitions depended on the military position; and the Cabinet complained that Lord Kitchener did

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, p. 126; Oxford and Asquith, *Memoirs and Reflections*, II, pp. 87-8; Sir M. Hankey, *op. cit.* p. 262.

<sup>2</sup> Sir M. Hankey, *op. cit.* p. 262.

<sup>3</sup> *Life of Lord Oxford and Asquith*, II, p. 127.

<sup>4</sup> *Ibid.* II, p. 125.

<sup>5</sup> *Ibid.*; and see Churchill, *World Crisis*, I, pp. 338-40.

not give them enough information.<sup>1</sup> A Munitions Committee of the Cabinet was set up on October 12th, 1914, and consisted of Lord Haldane, the Secretary of State for War, the Chancellor of the Exchequer, the First Lord of the Admiralty, the Home Secretary, the President of the Board of Trade and the President of the Board of Agriculture.<sup>2</sup> It met only six times between October 12th, 1914, and January 1st, 1915, and was dissolved on the latter date. A new Committee consisting of the Chancellor of the Exchequer, Mr Balfour, Mr Edwin Montagu, a business man, and representatives of the departments was set up in April, 1915, but shortly afterwards its functions were taken over by the new Ministry of Munitions, and Mr Lloyd George left the Treasury to become head of the new department.<sup>3</sup> According to Mr Lloyd George, the incessant demands of the Commander-in-Chief for munitions were never brought before the Cabinet<sup>4</sup> nor even before the Munitions Committee.<sup>5</sup>

The decision to force the Dardanelles was taken, for effective purposes, in the War Council. The Cabinet dealt with matters of foreign policy, such as the Balkan situation, the bringing in of Italy, and maritime questions touching the rights of neutrals.<sup>6</sup> The lack of central direction in respect of military questions is shown by the fact that from April 6th to May 14th, 1915, the War Council did not meet.<sup>7</sup> In the meantime, the "Opposition"—which had ceased to oppose—was becoming more and more restive as news came from the Western Front of the shortage of shells, and as dispute about the Dardanelles campaign became more acute. The resignation of Lord Fisher from the post of First Sea Lord produced the demand for Coalition, and the Coalition Government was formed in May, 1915.

Mr Asquith had sometimes expressed the wish that he had "more Greys and Crewes" and not quite so many "very clever men".<sup>8</sup> He

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, p. 128.

<sup>2</sup> *Ibid.* II, p. 136; Lloyd George, *War Memoirs*, I, pp. 146-7.

<sup>3</sup> Lloyd George, *War Memoirs*, I, pp. 186-7; *Life of Lord Oxford and Asquith*, II, p. 140.

<sup>4</sup> Lloyd George, *War Memoirs*, I, p. 195.

<sup>5</sup> *Ibid.* I, pp. 202-3.

<sup>6</sup> *Life of Lord Oxford and Asquith*, II, p. 130.

<sup>7</sup> Lloyd George, *War Memoirs*, I, p. 224.

<sup>8</sup> *Life of Lord Oxford and Asquith*, II, p. 131.

wanted, that is, ministers immersed in their own departmental work who would not raise inconvenient questions in the Cabinet. Whether it can be said that the number of "clever men" was increased by the Coalition or not, it is certain that the number of ministers who thought they had a right to take part in the general control was at least doubled. The War Council was converted into the Dardanelles Committee. It now consisted of the Prime Minister, Lord Kitchener, Mr Lloyd George, Mr Balfour (Admiralty), Mr Churchill, Sir Edward Carson, Mr Bonar Law, Lord Lansdowne, Lord Crewe, Lord Curzon and Lord Selborne. Yet, in spite of its size, there were enough other ministers in the Cabinet to compel rediscussion of every issue when its proceedings were reported to the Cabinet.<sup>1</sup>

In 1916, Mr Asquith himself indicated the defects of the War Committee:<sup>2</sup> (1) Its membership was too large. (2) There was delay, evasion, and often obstruction, on the part of the departments in giving effect to its decisions. (3) It was often kept in ignorance by the departments of information which was essential and even vital, though of a technical kind. (4) It was overcharged with duties, many of them of a kind suitable for subordinate bodies.<sup>3</sup> This was in reply to a memorandum by Lloyd George advocating the setting up of a War Committee with full executive powers, subject to the right of the Prime Minister to refer any matter to the Cabinet.<sup>4</sup> The plan involved the suspension of the Prime Minister from the direct control of the war and led ultimately to the resignation of Mr Asquith and the formation of the second War Coalition under Mr Lloyd George.

The new Prime Minister decided to supersede the ordinary Cabinet by a War Cabinet of five members, none of whom, except the Chancellor of the Exchequer, should possess departmental duties. Mr Lloyd George has explained his motives:

I had long come to the conclusion that a body of twenty members was a futile instrument for the conduct of any business which required immediate action. I ultimately resolved to set up a Cabinet of five to whom the whole control of the War should be entrusted. I felt that they must remain in almost constant session to review events from day

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, p. 180.

<sup>2</sup> The Dardanelles Committee became the War Committee in 1916.

<sup>3</sup> Lloyd George, *War Memoirs*, II, p. 984.

<sup>4</sup> *Ibid.* II, pp. 982-3.

to day. Ministers who were in charge of departments could rarely be available for purposes of consultation, and their minds would naturally be taken up with the innumerable petty details of their respective offices. The War Cabinet must therefore consist of men who were free from all departmental cares and who could devote the whole of their time and thought to the momentous questions which were involved in the successful direction of a world war. When matters arose which affected any particular department, the head of that department could be summoned to attend the Cabinet bringing with him appropriate experts. It was made quite clear that the Cabinet would have the same direct access to those experts as their departmental chiefs, that questions could be addressed to them directly, and that they were to speak their minds freely without awaiting the permission or opinion of their political chiefs.<sup>1</sup>

It was agreed at the outset that collective responsibility in the strict sense would attach only to the members of the War Cabinet.<sup>2</sup> The Secretariat of the War Council became the Secretariat of the War Cabinet,<sup>3</sup> and exercised the functions which the Cabinet Secretariat now performs.<sup>4</sup> The War Cabinet met daily in the morning and sometimes in the afternoon and evening as well.<sup>5</sup> Its procedure was thus described:

At each meeting the Cabinet begins by hearing reports as to the progress of the war since the preceding day. Unless it wishes to confine its deliberations to questions of policy, it then proceeds to deal with questions awaiting its decision. As these questions in the vast majority of cases affect one or more of the Administrative departments, almost all its meetings are attended by the ministers and their chief departmental officials concerned. The majority of the sessions of the War Cabinet consist, therefore, of a series of meetings between members of the War Cabinet and those responsible for executive action at which questions of policy concerning those departments are discussed and settled. Questions of overlapping or conflict between departments are determined, and the general lines of policy throughout every branch of the administration co-ordinated so as to form part of a consistent war

<sup>1</sup> Lloyd George, *War Memoirs*, III, pp. 1063-4.

<sup>2</sup> Beaverbrook, *Politicians and the War*, II, p. 323.

<sup>3</sup> *The War Cabinet*, Report for the Year 1917, C. 9005/1918, pp. 2-3.

<sup>4</sup> See *ante*, pp. 186-9.

<sup>5</sup> *Life of Lord Curzon*, III, p. 148.

plan. Ministers have full discretion to bring with them any experts, either from their own departments or from outside.<sup>1</sup>

From December 9th, 1916, to December, 1917, 248 persons other than members of the War Cabinet and its Secretariat attended the War Cabinet. The Secretary of State for Foreign Affairs, the First Sea Lord and the Chief of the Imperial General Staff attended every meeting to communicate the latest information and to consult on questions of policy. In 1917, the War Cabinet held over 300 meetings.<sup>2</sup>

A considerable number of less important, but often highly complex, questions are referred to individual members of the War Cabinet or to committees of ministers or others. In some cases the minister or committee has power to decide, in others the instruction is to carry out a detailed investigation such as the War Cabinet itself could not usefully undertake and submit a report for final decision to the Cabinet. By this means the War Cabinet is enabled to carry out exhaustive investigations without the whole of its members being overburdened with the details of every question.<sup>3</sup>

To the Cabinet of five persons was added in 1918 General Smuts who was, of course, neither a peer nor a member of the House of Commons. The procedure established in 1916 was continued until 1919. Much more use was made, however, of standing committees. Usually, a member of the War Cabinet was in the chair, but, except in a few cases, the other members were ministers outside the Cabinet and departmental experts. The most interesting of these committees was the War Priorities Committee. The three services wanted men for the forces. The Ministry of Munitions wanted men at home for the production of munitions. Industry, including agriculture, required men and women for the maintenance of production and distribution. The Ministry of National Service was concerned to see that the men and women were provided. The problem was, therefore, to secure a constantly changing scheme of priorities in which the respective needs in personnel—and, through personnel, of material—could be met. The Committee consisted of General Smuts, the First Lord of the Admiralty, the Secre-

<sup>1</sup> *The War Cabinet*, Report for the Year 1917, C. 9005/1918, p. 2.

<sup>2</sup> *Ibid.* C. 9055/1918, p. 2.

<sup>3</sup> *Ibid.*

aries of State for War and Air, and the Ministers of Munitions and National Service.

The Committee set up seventeen sub-committees to deal with each subject or commodity of which there was an excess of demand over supply. These reported to the Committee, which decided any question or disagreement. In addition, the Committee set up a Permanent Sub-Committee of departmental officials to act as an intermediate court between the sub-committees and the War Priorities Committee; a Permanent Labour Sub-Committee to co-ordinate departmental methods of dealing with labour dilution, release of men for war-service, etc.; a Works Construction Sub-Committee to deal with the priority of building schemes; and an Industries Sub-Committee to provide for the needs of non-essential industries under Governmental control.<sup>1</sup>

The War Cabinet had also an Eastern Committee, with Lord Curzon of the War Cabinet in the chair. It co-ordinated military and diplomatic policy in the Near East and Central Asia, and thus was concerned primarily with the work of the Foreign, India and War Offices, of the Admiralty, of the Ministry of Shipping, and of the Treasury. This committee was dissolved at the opening of the Peace conference, though its work was continued by a departmental committee.<sup>2</sup> In addition there was an Economic Defence and Development Committee, a Home Affairs Committee and a Demobilisation Committee.<sup>3</sup>

The War Cabinet held 187 meetings in 1918, and 278 persons, besides members of the War Cabinet and the Secretariat, attended its sessions.<sup>4</sup>

The sittings of the War Cabinet were enlarged, both in 1917 and in 1918, by the attendance of Dominion ministers. Mr Lloyd George had announced in 1917 that a special Imperial Conference would be summoned. But not all the Prime Ministers were able to attend, and the sittings were more informal than at the regular Imperial Conferences. The opportunity was taken to hold special sessions of the War Cabinet at which the general Imperial contribution to the war was examined.<sup>5</sup>

<sup>1</sup> *The War Cabinet*, Report for the Year 1918, C. 325/1919, p. 2.

<sup>2</sup> *Ibid.* p. 3.

<sup>3</sup> *Ibid.* p. 4.

<sup>4</sup> *Ibid.* p. 5.

<sup>5</sup> *The War Cabinet*, Report for the Year 1917, C. 9005/1918, pp. 6-7; Report for the Year 1918, C. 325/1919, p. 8.

Including these sessions, the War Cabinet met 524 times between December, 1916, and December, 1918.<sup>1</sup>

The experience of the war teaches several lessons. First, the ordinary Cabinet system provides insufficient control where day-to-day decisions of outstanding importance have to be taken. The Cabinet system assumes that the main lines of departmental policy can be laid down well in advance, so that the departments can take consequential decisions without constant reference to the Cabinet. Where the pace of national activity has to be speeded up, as in war or in time of financial crisis, the Cabinet system has to be modified.

Secondly, the experience of the War Cabinet shows that, normally, the Cabinet must contain the chief departmental ministers. The conduct of war implies the subordination of governmental activity to the attainment of a single objective. As soon as the demands of the war became less insistent and the demands of peace became obvious, there arose complaints that departmental ministers were deprived of an effective voice in the determination of questions that affected their departments. Evidence to this effect was given before the Machinery of Government Committee in 1918. Also, the matters for determination became wider in their variety and hardly less wide in their scope. Conflicts between the Prime Minister and the Foreign Secretary (who was not in the War Cabinet) became common.<sup>2</sup> A Cabinet of departmental ministers was necessary to control the whole.

At the same time, the necessity of delegation or reference to committees was almost as obvious in peace as in war. Though formal standing committees of the Cabinet are now few, temporary committees are frequently set up; and the Committee of Imperial Defence, to which have been restored its pre-war functions, uses the Committee system even more.

Finally, the war showed the imperative necessity of greater co-ordination of the three service departments. There has indeed been since 1922 a substantial body of opinion which has favoured the unity of the services under a single Cabinet minister, with a minister outside the Cabinet at the head of each. Mr Winston Churchill defended his dual

<sup>1</sup> C. 325/1919, p. 5.

<sup>2</sup> *Ante*, pp. 168-9.



position as Secretary of State for War and for Air in 1921 by pointing to the necessity of co-ordination. The Geddes Committee in 1922 recommended the creation of a Ministry of Defence.<sup>1</sup> A Cabinet Committee accepted the proposal in principle, but considered that the time was not then appropriate. It recommended instead that the Committee of Imperial Defence should be in constant session in order to consider and advise on matters of policy affecting the three fighting services.<sup>2</sup>

### §3. *The Committee of Imperial Defence since 1919.*

The development of the Committee along these lines was discussed by a sub-committee of the Committee of Imperial Defence (the Salisbury Committee) in 1924, and its proposals have for the most part been accepted and put into force. From 1920 to 1924 the Committee of Imperial Defence was presided over not by the Prime Minister but by a nominee of his. Lord Balfour presided in place of Mr Lloyd George, Lord Salisbury in place of Mr Bonar Law, Lord Curzon in place of Mr Baldwin in his first year of office, and Lord Haldane in place of Mr MacDonald in 1924.<sup>3</sup> The Salisbury Committee recommended that this practice should be continued. But on resuming office in 1924 Mr Baldwin decided that he ought to exercise the function personally, and Mr MacDonald followed his example from 1931 to 1935.<sup>4</sup> Mr Baldwin in 1928 gave three reasons for his decision—first, that the Prime Minister ought to be familiar with the matters which are going to be brought before the Cabinet; secondly, that he ought to be aware of developments in case war breaks out; and thirdly, that he could not exercise his function of deciding questions as to the Estimates unless he was familiar with the problems of defence.

When the rearmament of Europe in 1936 induced the Government to propose substantial increases in the British defence forces, the practice which Mr Baldwin and Mr MacDonald had followed came in for criticism. Suggestions for a Ministry of Defence to co-ordinate the defence departments were renewed. Alternatively, it was suggested that some

<sup>1</sup> Report of the Committee on National Expenditure.

<sup>2</sup> Report of the Committee of the Committee of Imperial Defence on National and Imperial Defence, C. 2029/1924, p. 9.

<sup>3</sup> 287 H.C. Deb. 5 s., 1321.

<sup>4</sup> *Ibid.*

person other than the Prime Minister should act as chairman of the Committee of Imperial Defence. The Government decided not to accept either proposal, but agreed to the appointment of a Minister for the Co-ordination of Defence. The Government's decision was thus announced to Parliament:

It has been decided that, while the Prime Minister will retain, as he clearly must, the Chairmanship of the Committee of Imperial Defence and of the Defence Policy and Requirements Committee (see *post*), a Minister will be appointed as Deputy-Chairman of these Committees to whom the Prime Minister will delegate the following duties:

(i) The general day-to-day supervision and control on the Prime Minister's behalf of the whole organisation and activity of the Committee of Imperial Defence; the co-ordination of executive action and of monthly progress reports to the Cabinet, or of any Committee appointed by them, on the execution of the re-conditioning plans; discernment of any points which either have not been taken up or are being pursued too slowly, and (in consultation with the Prime Minister or other Ministers or Committees as required) of appropriate measures for their rectification;

(ii) In the Prime Minister's absence, taking the Chair at the Committee of Imperial Defence and the Defence Policy and Requirements Committee;

(iii) Personal consultation with the Chiefs of Staff together, including the right to convene under his chairmanship the Chiefs of Staff Committee (see *post*) whenever he or they think desirable;

(iv) The chairmanship of the Principal Supply Officers Committee (see *post*).

It will be the duty of the Deputy-Chairman to make such recommendations as he thinks necessary for improving the organisation of the Committee of Imperial Defence.<sup>1</sup>

The Salisbury Committee recommended that the chairman, when not the Prime Minister, should have powers of initiative under the general direction of the Cabinet. He would then have the four functions of presiding over the Committee, reporting to the Prime Minister and the Cabinet the recommendations of the Committee, interpreting the decisions of the Prime Minister and the Cabinet to the departments in

<sup>1</sup> 309 H.C.Deb. 5 s., 659; see also Cmd. 5107, 1936, p. 14.

matters of detail, and keeping the defence situation constantly in view.<sup>1</sup> These functions are more precisely delineated in the decision of 1936 set out above.

The Committee also recommended a greater permanency in the membership of the Committee. This has in fact been done, though the theory of its composition remains unaltered. The Treasury minute of May 4th, 1904, still governs its membership and provides that the Committee shall consist of "the Prime Minister with such other members as, having regard to the nature of the subject discussed, he may from time to time summon to assist him".<sup>2</sup> But in fact its nucleus is more or less permanently fixed because the ministers at the head of the important departments concerned must necessarily be summoned. In 1936 it consisted of the Prime Minister, the Deputy Chairman, the Lord President of the Council, the Chancellor of the Exchequer, the Secretaries of State for Foreign Affairs, Home Affairs, the Dominions, the Colonies, India, War and Air, the First Lord of the Admiralty, the Parliamentary Under-Secretary of State for Foreign Affairs, the three Chiefs of Staff, and the Permanent Secretary to the Treasury as head of H.M. Civil Service. Its composition is, however, at the discretion of the Prime Minister.

Mr Balfour appointed two "permanent" members, who were intended not to change with the Government; but this practice is no longer followed.<sup>3</sup> Sometimes Opposition leaders are summoned. Mr Balfour was invited to attend and did attend in 1908 and 1913.<sup>4</sup> The Labour Government in 1930 and 1931 invited members of the Opposition to attend on special occasions.<sup>5</sup> Representatives of the Dominions are summoned when the business of a meeting affects the Dominions. Also, as will be explained, the Committee operates through sub-committees with their separate sub-sub-committees, and a considerable number of ministers, officials and outside experts is associated with their work.

<sup>1</sup> Report, pp. 16-18.

<sup>2</sup> Treasury minute of 4 May, 1904, quoted, 191 H.C.Deb. 5 s., 1527.

<sup>3</sup> 191 H.C.Deb. 5 s., 1029, 1528.

<sup>4</sup> *Esher Papers*, II, pp. 316-17; Sir M. Hankey, *op. cit.* pp. 258, 266.

<sup>5</sup> 299 H.C.Deb. 5 s., 998.

The Committee met in 1927 about once every two or three weeks during the Session.<sup>1</sup> But it may be assumed that the deterioration of world conditions since that year has compelled more frequent meetings. Also, the Committee deals only with general policy. For it has "a regular warren of committees, all breeding a numerous progeny of sub-committees".<sup>2</sup> In 1927 it had about fifty committees and sub-committees, involving the assistance of no less than 390 persons—20 ministers, 126 representatives of the fighting services, 158 civil servants and 86 outside experts.<sup>3</sup> Between March, 1934, and March, 1935, the Committee and its sub-committees held 237 meetings.<sup>4</sup>

Of the committees, the most important is the Chiefs of Staff Committee. This consists of the three Chiefs of Staff with the Prime Minister or Deputy-Chairman as chairman, though the Prime Minister does not always attend and it is not intended that the Deputy-Chairman should normally be present.<sup>5</sup> It is the substitute for an "Imperial General Staff", and has been described as "an Imperial General Staff in Commission". It considers all the technical questions of defence and is responsible, subject to the Committee of Imperial Defence and the Cabinet, for the consideration and investigation<sup>6</sup> of the question of Imperial Defence as a whole, and for co-ordinating the functions and requirements of the three Defence Services. Its position was thus defined in 1936:

The individuals composing it have a double function: each advises his own political chief, and acting together the Committee preserves unimpaired the right to submit confidential reports of their collective military view to the Chairman or Deputy Chairman of the Committee of Imperial Defence. It is not proposed that meetings of the Chiefs of Staff Committee should normally take place under the presidency of the Deputy Chairman. He will supplement the present activities and initiative of the Chiefs of Staff Committee by guidance and initiative of his own, his function being to ensure that every aspect is fully considered and that difficulties and differences are frankly faced.<sup>7</sup>

<sup>1</sup> 215 H.C.Deb. 5 s., 1028.

<sup>2</sup> *Ibid.* 1039.

<sup>3</sup> *Ibid.* 1028.

<sup>4</sup> 299 H.C.Deb. 5 s., 555.

<sup>5</sup> 309 H.C.Deb. 5 s., 599.

<sup>6</sup> Powers of initiation were given on the recommendation of the Salisbury Committee; see 215 H.C.Deb. 5 s., 1030.

<sup>7</sup> 309 H.C.Deb. 5 s., 659-60; Cmd. 5107, p. 15.

This last sentence appears to relate to a criticism which has sometimes been addressed to the Chiefs of Staff Committee. It is said that each member is so concerned with the needs and the strategy of his own service that agreement on general needs and general strategy can sometimes not be reached. The idea of the new arrangement appears to be that normally the Chiefs of Staff shall discuss matters privately without the interference of civilian ministers, but that, if it appears to the Deputy-Chairman that no effective agreement is being reached he shall, either by summoning the Chiefs of Staff under the third of his powers set out above, or by some other means (such as bringing the matter before the Committee of Imperial Defence), see that some decision is arrived at.

The various committees and sub-committees deal with special subjects.

Man-power, scientific investigation, experiments, investigation of foreign conditions, and so on, can only be fully done by appointing just exactly the number of committees required to do it... All that information, all that work, all that business goes on from day to day through the whole year, goes through the proper channels and at last reaches the Chiefs of the Staffs. Once a year the Committee of the Staffs present a report to the Committee of Imperial Defence. That report is based on Foreign Office information, upon records of changes of policy throughout the year, changes in outlook and changes in problems. They sweep the whole field of Imperial Defence in its minor as well as its major aspects... They make recommendations as they like and observations as they like... The Committee of Imperial Defence discuss the report, and when the report has passed through the Committee of Imperial Defence, it is sent to the Cabinet. When it is sent to the Cabinet there is a body of ministers who attend the Committee of Imperial Defence, well informed, having had all the major and important papers put at their disposal during the year, and who are in a position to discuss, consider and deal with this report from the Chiefs of the Staffs. Thus the policy of Imperial Defence for the year is settled, and is then sent back to be operated. First of all, money has to be found for it; and, secondly, where plans need to be made, modified or amended, the proper authority will examine those plans in the light of the decisions of the Cabinet, and bring the whole system up to date and into efficient condition;... this review... is always made in time for the Estimates... There is a very high state of co-ordination and co-operation. It is done

by co-operation of the Defence Forces, and then, finally, by the political and military co-operation which the Committee of Imperial Defence present.<sup>1</sup>

There are special ministerial committees such as the Defence of India Sub-Committee and the Middle East Sub-Committee. In carrying out plans, contact is maintained with such committees as the Man-Power Committee, the Principal Supply Officers' Committee and the Oil Board.<sup>2</sup> But the actual work is done by the departments—not necessarily the Service departments, for the Home Office, for instance, will deal with the plans necessary to protect the civil population from aircraft attacks, so far as such plans are not of a military character.<sup>3</sup>

The committee organisation must necessarily vary from time to time. Also, the nature of a task which a committee is undertaking may give an idea as to the nature of the policy of the Government, so that the information made public is necessarily scanty. In 1927 the most important committees—the Chiefs of Staff Committee apart—were the Man-Power Committee on personnel and the Principal Supply Officers' Committee on joint supply questions. Both were under the presidency of the then President of the Board of Trade. But in 1936 it was decided that the Minister for the Co-ordination of Defence should be chairman of the latter committee. Another important committee is the Joint Planning Committee. It consists of the Directors of Plans in the three Service departments, together with three officers drawn respectively from the Navy, Army and Air Force, who are graduates of the Imperial Defence College. These three officers hold official positions on the staffs of their respective departments. Their work in their own departments is chiefly that of obtaining the necessary material for the preparation of joint plans. But their main work is on collective plans prepared by the Joint Planning Committee for submission to the Chiefs of Staff Committee.<sup>4</sup> Each committee may have a number of

<sup>1</sup> 287 H.C.Deb. 5 s., 1231-2 (1934) (Mr MacDonald speaking).

<sup>2</sup> *Ibid.* 1234.

<sup>3</sup> See the *Air Raid Precautions Handbooks*, "produced under the authority of the Secretary of State, by the Air Raid Precautions Department of the Home Office with the assistance of other Government Departments concerned": A.R.P. No. 1, p. 3.

<sup>4</sup> 309 H.C.Deb. 5 s., 660.

sub-committees. Thus, in 1927, "working in the orbit of the Chiefs of Staff Committee, the Overseas Defence Committee, started forty years ago under the title of the Colonial Defence Committee, deals with questions of Colonial Defence; the Home Defence Committee, ...with Home Defence; on matters of principle common to both they meet as one committee".<sup>1</sup>

In 1934 it was disclosed that, in addition to this network of committees under the control of the Committee of Imperial Defence, the three Defence departments co-ordinated their research through the Ordnance Committee, the Chemical Research Committee, the Joint Wireless Telegraphy Committee, the Mechanisation Board and the Small Arms Committee.<sup>2</sup>

Until recently the Committee of Imperial Defence has been concerned with strategy and co-ordination and the Cabinet with policy. In July, 1935, the Cabinet set up a standing sub-committee called the Defence Policy and Requirements Committee "to keep the defensive situation as a whole constantly under review so as to ensure that our defence arrangements and our foreign policy are in line and to advise the Cabinet and Committee of Imperial Defence in the light of the international and financial situation as to any necessary changes in policy or in the defence proposals".<sup>3</sup> This Committee was an ordinary Cabinet committee consisting of the Prime Minister, the Foreign Secretary, the heads of the three Service Departments, and certain other ministers.<sup>4</sup> On its advice the Cabinet approved the movement of additional forces in and near the Mediterranean. It proceeded, however, to discuss defence policy generally in the light of the changing conditions of the European situation. In particular, it developed plans for a considerable extension of the forces; and these were, after approval by the Cabinet, published as a white paper.<sup>5</sup> As has been mentioned already, the Minister for the Co-ordination of Defence became Deputy-Chairman of this Committee.

<sup>1</sup> Sir M. Hankey, *op. cit.* p. 268.

<sup>2</sup> 287 H.C.Deb. 5 s., 1327.

<sup>3</sup> Cmd. 5107/1936, p. 14.

<sup>4</sup> An unusual feature of this Committee is that Lord Weir, who is not a minister, is a member. He also attends several other committees.

<sup>5</sup> *Ibid.*

§4. *The Economic Advisory Council.*

The working of the Committee of Imperial Defence shows how far the Cabinet system has progressed in the direction of committee government. Its peculiarity in this direction is due to the division of defence functions among three separate departments and services and the further dispersion of administration that arises from the need to defend the several territories governed by or related with the Dominions Office, the Colonial Office and the India Office. The extension of the Committee's methods to the economic field has often been suggested. But the problem is far more difficult. Economic changes defy the forecasts of experts. A "Crisis Book" for the next "economic blizzard" is impossible. If, however, the planning of trade and industry were adopted as a policy, the method would no doubt be a system not essentially different from that of the Committee of Imperial Defence.

Under present political assumptions, the most that can be done is to make available to all departments the product of economic and industrial research. In part, this is the function of the Department of Scientific and Industrial Research. Yet something more emphatically economic was necessary. In June, 1925, Mr Baldwin established a Committee of Civil Research, and in January, 1930, Mr MacDonald merged this body into the Economic Advisory Council, which is still in existence.<sup>1</sup>

The Council is a standing body reporting to the Cabinet. Its functions are to advise the Government in economic matters, and to make continuous study of developments in trade and industry and in the use of national and imperial resources, of the effect of legislation and fiscal policy at home and abroad, and of all aspects of national, imperial and international economy with a bearing on the prosperity of the country. It is subject to the general directions of the Prime Minister, and its expenses are borne on the Treasury vote. It is directed to keep in close touch with the departments affected by its work, with a view to the concerted study of economic problems of national interest. It must, however, in no way interfere with the functions or responsibilities of ministers or of the departments over which they preside. It is a purely advisory body, and it has no executive or administrative powers.

<sup>1</sup> See Cmd. 3478/1930.



The Prime Minister is chairman, and the Chancellor of the Exchequer, the Secretary of State for the Dominions, the President of the Board of Trade and the Minister of Agriculture and Fisheries are members. The Prime Minister may summon other ministers from time to time, and outside experts are chosen because of their special knowledge and experience in industrial and economic matters. Of these outside experts there were originally fifteen. It has a secretary holding the rank of assistant secretary in the civil service, a number of assistant secretaries, and such other staff as may be found necessary from time to time.

Provided that it acts after receiving the approval of the Prime Minister, the Council may initiate inquiries into, and advise upon, any subject within its scope, including proposals for legislation. It is directed to consult departments and outside authorities as to work on hand or projected, and to collate such statistical or other information as may be required for the performance of its work. The meetings of the Council are mainly devoted to a review of the state of trade and to the consideration of reports from committees.<sup>1</sup> These committees, like the sub-committees of the Committee of Imperial Defence, are not necessarily composed entirely of members of the Council. Indeed, the Council is directed to prepare a list of persons with industrial, commercial, financial and working-class experience, and of persons who have made a special study of social, economic and other scientific problems, who are able to assist by serving on committees or in other ways. The Council has two standing committees. The Committee on Economic Information is directed to supervise the preparation of periodical reports to the Council on the economic situation, and to advise as to the continuous study of economic development. The Committee on Scientific Research is directed to advise the Council as to the bearings of the reports of its scientific committees, and generally as to the discharge of its functions in their scientific aspects.<sup>2</sup> There are, in addition, *ad hoc*

<sup>1</sup> It may be inferred that the Council did not meet in 1935. See 308 H.C.Deb. 5 s., 1954.

<sup>2</sup> There were 26 meetings of the two standing Committees in 1935: 308 H.C.Deb. 5 s., 1954.

committees, some of which were taken over from the Committee of Civil Research, the others having been established by the Council. These have dealt with subjects as widely diverse as Tsetse Fly Control, the Cotton Industry, and Agricultural Policy.

All reports of the Council and its committees are printed and are submitted to the Prime Minister, as Chairman of the Council, before action is taken upon them. No doubt the information compiled and the policies suggested have been useful in the development of departmental policy. It is evident in any case that economic policy must depend primarily upon political policy. The members of the Council, other than the ministerial members, are of widely differing political beliefs. Accordingly, the Council can do little more than deal with problems of a technical nature. While it cannot be said that the experiment has failed, it cannot yet be said that it has succeeded.

## CHAPTER XI

# Constitutional Monarchy

### §1. *The Position of the Sovereign.*

The existence or absence of a monarch does not in itself make a fundamental distinction in a Constitution. In a Cabinet system the Cabinet governs. The functions of the head of the State, be he King or President, are ancillary. It would be wrong, however, to underestimate the influence of the monarch in British politics. The documents now available show that the Whig view of monarchy<sup>1</sup> which prevailed in the middle of last century and which was expounded by Bagehot was not wholly in accordance with the facts. The Sovereign must, in the last resort, accept the decisions of the Government, but he may have considerable influence on those decisions.

(The advantage of constitutional monarchy is that the head of the State is free of party ties. A promoted politician cannot forget his past; and, even if he can, others cannot. Impartiality is not to be expected in any person. Men of strong character have strong opinions.) The individual who does not form conclusions has no capacity for doing so. The liberal tradition, which is the basis of the democratic system, does not assume the existence of impartiality. It assumes only that different opinions may be honestly held and that the person who occupies a judicial position, whether he be King, Speaker of the House of Commons, or judge of the High Court, will try to exclude his bias from any decision that he may take in the exercise of the functions of his office.

Association with particular parties or particular classes, however, renders the task of the arbiter more difficult. (The Sovereign, unlike an elected President, has no party associations.) He is bred in a highly

<sup>1</sup> In a pamphlet published by "Verax" in 1878—a document which had a certain success in its day—it was said: "The Crown we only know as the ceremonial device on the Great Seal by which the nation's resolves are determined, and the moment we are forced to know it in any other capacity danger commences for one party, though hardly for both": quoted *Quarterly Review*, CLVIII, p. 28.

selective atmosphere; he does not form party loyalties. As a result, not only is he in a position to act more impartially but also, what is of more importance, he is believed by others to be impartial. Yet until the reign of Queen Victoria, the British monarchy had not attained this position of independence. The political sympathies of all the monarchs from Anne to George IV were well known. William IV had not, before his accession, associated himself with any party. He had led the life of a worthy burgess. Even so, he was assumed in fact to be a supporter of the Whig Party. Queen Victoria, too, was assumed to be partisan. Her accession gave a new lease of life to the Whig Government.<sup>1</sup> The King of the Belgians said that she was the only one of the whole family, except the Duke of Sussex, who would keep them in office; consequently, they were bound to serve her with sincerity and attachment.<sup>2</sup>

The lesson of the Reform Act had not yet been learned. It was still not understood that the power of the Government rested on the vote of the electorate, not on the "confidence" of the Queen. The Queen herself did not understand the situation. She invited Lord Melbourne to dinner once a week "as I think it right to show publicly that I esteem him and have confidence in him, as he has behaved so well".<sup>3</sup> The dispute over the Ladies of the Bedchamber in 1839 was due to the fact, not that Peel feared that the Whig Ladies would whisper Whig ideas into the Queen's ears, but that he thought that some demonstration of confidence in him was necessary. The Whigs had great difficulty in 1841 in drafting a Queen's speech which did not appear to make the Queen side with them;<sup>4</sup> and Lord John Russell had to explain to the House of Commons that the ministers and they alone were responsible for it.<sup>5</sup> Melbourne's desire not to dissolve in that year had been due to his belief that an unsuccessful appeal to the people by the Whigs would be

<sup>1</sup> G. Kitson Clark, *Peel and the Conservative Party*, p. 361. "Nobody can deny that [the accession of Queen Victoria] has given the Whig Government an advantage over the Tories. Hitherto the Government have been working against the stream, inasmuch as they had the influence of the Crown dead against them": Greville, *Memoirs*, 2nd Series, I, p. 5.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, I, pp. 92-3.

<sup>3</sup> *Ibid.* 1st Series, I, p. 110.

<sup>4</sup> *Annual Register*, 1841, p. 198.

<sup>5</sup> *Ibid.*

an affront to the Crown.<sup>1</sup> When the Government was defeated he advised her to say "that your Majesty's present servants possessed your Majesty's confidence, and that you only parted with them in deference to the will of Parliament".<sup>2</sup> As late as 1855 the Queen offered Lord Aberdeen the Garter because she "wishes to give a public testimony of her continued confidence in Lord Aberdeen's administration".<sup>3</sup>

Until 1841 the Queen completely identified herself with the Whig Party. In 1837 she wrote to the King of the Belgians: "With respect to the Elections, they are, I am thankful to say, rather favourable, though not so as we could wish. But upon the whole we shall have as good a House as we had.... The Irish Elections are very favourable to us; we have gained six in the English boroughs, and lost, I grieve to say, several in the counties."<sup>4</sup> In 1840 she wrote: "The Tories really are very astonishing; *as they cannot and dare not attack us in Parliament, they do everything that they can to be personally rude to me.... The Whigs are the only safe and loyal people, and the Radicals will also rally round their Queen to protect her from the Tories.*"<sup>5</sup> In 1841 she told Lord Clarendon that she had not seen an article in *The Times* "for she only read the papers on *our own side*".<sup>6</sup>

The Prince Consort, however, effected a change. Baron Stockmar, for once, gave him advice which was almost correct.<sup>7</sup> In any case, his native intelligence was enough to show him that the fundamental principle of constitutional monarchy is that in party politics the Crown should not take sides. It can have real influence on policy, but it should never be brought into political controversy. When the Duke of Wellington could speak, not incorrectly, of "being governed by a Sovereign who is the head of an adverse party",<sup>8</sup> the Crown's position was fundamentally weak. After 1841 that accusation could not be levelled against the Queen during the Prince's lifetime.

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, I, p. 348.

<sup>2</sup> *Ibid.* 1st Series, I, p. 385.

<sup>3</sup> *Ibid.* 1st Series, III, p. 84.

<sup>4</sup> *Ibid.* 1st Series, I, p. 116.

<sup>5</sup> *Ibid.* 1st Series, I, p. 268 (italics in the original).

<sup>6</sup> *Life of the Earl of Clarendon*, I, p. 221.

<sup>7</sup> *Life of the Prince Consort*, I, p. 110; for Baron Stockmar, see *post*, pp. 261-2.

<sup>8</sup> *Peel Papers*, II, p. 426.

It was indeed the aim of ministers from Sir Robert Peel onward to keep the Sovereign's name out of political controversy. Though Mr Gladstone, as will presently be seen, had more cause to complain even than the Tories of 1839, no word of public criticism passed his lips. Prince Albert committed a *faux pas* in attending the debate on the Repeal of the Corn Laws, and was duly criticised by Lord George Bentinck;<sup>1</sup> personal criticism of the Queen—as distinct from criticism of monarchy as such—ceased to be a feature of English public life. Matters affecting the monarch personally were, with the exception of the Queen's assumption of the title of "Queen-Empress of India", settled by agreement between the Government and the Opposition. Lord Granville's criticism of Mr Disraeli's neglect in the excepted case was fully justified.<sup>2</sup> Enormous care was taken in 1910 and 1911 to prevent any discussion of the King's actions and to secure that criticism should be aimed at the Government.<sup>3</sup>

Nevertheless, the Queen became definitely a partisan after 1868. She was apt to take violent dislike to individual ministers. Sir Robert Peel became an enemy by opposing the Prince's grant in 1840, though personal acquaintance removed feelings of antipathy. Lord George Bentinck and "that detestable Mr D'Israeli" became the subjects of royal disfavour by their consistency to Tory policy when the (by now) favourite minister ate his words. But Mr Disraeli knew how to make the most of his opportunities once he was given personal access. Mr Gladstone had been in high favour as a follower of Sir Robert Peel, but as he progressed further to the left in his political opinions, and became more and more antagonistic to Mr Disraeli, antipathy grew. Mr Disraeli's flattery,<sup>4</sup> the Queen's growing conservatism, the new spirit that necessarily pervaded the Constitution after Disraeli's Reform Act, and Mr Gladstone's complete acceptance of the new conditions and the Radical principles that they implied, produced an antagonism in the Queen. Mr Gladstone before 1868 received lessons in Court behaviour

<sup>1</sup> Disraeli, *Lord George Bentinck*, p. 75.

<sup>2</sup> *Life of Lord Granville*, II, pp. 160-62.

<sup>3</sup> *Post*, pp. 326-35.

<sup>4</sup> E.g. *Letters of Queen Victoria*, 2nd Series, II, pp. 624-5. For another example, see *ibid.* 2nd Series, I, p. 551.

from the Dean of Windsor.<sup>1</sup> They availed him nothing. In 1897 Mr Gladstone spoke privately of the Queen's attitude as one of "armed neutrality".<sup>2</sup> "Neutrality", even armed, is not the word. The documents now available show that she was using more formidable weapons against him from 1885 onwards. Sir Charles Dilke was more correct in saying, even in 1879, that she was a Conservative.<sup>3</sup> It should be added, however, that she was a Conservative only in private; in public the fiction of impartiality was maintained—except when the death of Gordon moved her to commit the indiscretion of telegraphing *en clair* what she thought of Mr Gladstone.<sup>4</sup>

During the Parliament of 1874–80, as Lord Oxford and Asquith has said, the Queen "entered heart and soul" into partnership with Mr Disraeli.<sup>5</sup> On receiving news of the defeat of the Government in 1880 she wrote: "This is a terrible telegram.... The Queen cannot deny (Liberal as she has ever been but never Radical or democratic) she thinks it a great calamity for the country and the peace of Europe."<sup>6</sup> She began at once to raise objections to Liberal policy.<sup>7</sup> She refused to answer one of Mr Gladstone's letters, but wrote to Lord Granville (himself falling out of favour as a "weak reed")<sup>8</sup> to make it plain that "silence does not mean assent".... "She deeply grieves to see us [in the Eastern Question] on what she *must* call the wrong side."<sup>9</sup> She asked Lord Granville to read to the Cabinet a letter full of attacks on Radicalism.<sup>10</sup> She objected strongly to a statement by Mr Childers that the House was "pledged to administrative reform".<sup>11</sup> She said that the House of Commons was becoming like one of the Assemblies of a Republic. But "The House of Lords [where there was now a Conservative majority] has shown every disposition to be conciliatory, while

<sup>1</sup> Guedalla, *The Queen and Mr Gladstone*, I, pp. 44–5.

<sup>2</sup> *Life of Gladstone*, III, p. 291.

<sup>3</sup> *Life of Sir Charles Dilke*, I, p. 286.

<sup>4</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 597.

<sup>5</sup> Oxford and Asquith, *Fifty Years of Parliament*, I, p. 48.

<sup>6</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 73.

<sup>7</sup> *Ibid.* 2nd Series, III, pp. 117, 121, 122, 135.

<sup>8</sup> *Life of Lord Granville*, II, p. 5; *Letters of Queen Victoria*, 2nd Series, III, pp. 508–9.

<sup>9</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 122.

<sup>10</sup> *Ibid.* 2nd Series, III, pp. 130–31.

<sup>11</sup> *Ibid.*

the House of Commons only becomes more presumptuous."<sup>1</sup> She refused to agree to the evacuation of Candahar<sup>2</sup> or to the reversal of Lord Beaconsfield's policy in the Near East<sup>3</sup> (which had nevertheless been the main subject of attack by the Liberals at the election of that year). She stated that she *never* wrote to Mr Gladstone except on formal official matters:<sup>4</sup> but she found it necessary to invite him to Windsor chiefly because of rumours that she would not.<sup>5</sup> She appealed to Lord Hartington to stand up to the Radicals ("Let them go")<sup>6</sup> and to Mr Forster to deal with Ireland without worrying about the Radicals.<sup>7</sup> She had a long controversy with the Cabinet on the Queen's speech and, being successful, communicated her triumph to Lord Beaconsfield.<sup>8</sup> Nor was this the only communication with Lord Beaconsfield.<sup>9</sup>

In 1882, in a letter sprinkled with underlinings, she complains to the Prince of Wales about "this dreadfully Radical Government which contains many thinly-veiled *Republicans*" and about "this most dangerous man" who led it. "How differently do the leaders of Opposition in the House behave."<sup>10</sup> Yet Mr Joseph Chamberlain earned a stern reproof when he said that "there were no royalties in Birmingham and that no one had missed them".<sup>11</sup>

When, after more of this kind of controversy, the Government fell, the Queen proceeded at once to try to draw a wedge between Whigs and other Liberals, and asked Mr Gladstone to make a speech affirming that "liberalism is not socialism and that progress does not mean revolution".<sup>12</sup> It is not surprising that at the general election of 1885 the Queen identified herself with the Conservative Party. "The elections are not good, though there are some striking Conservative victories."<sup>13</sup> The elections certainly were not good, for in spite of the Queen's manoeuvres<sup>14</sup> the Liberals came back into office. The Queen now became

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 136.

<sup>2</sup> *Ibid.* 2nd Series, III, pp. 137-8.

<sup>4</sup> *Ibid.* 2nd Series, III, p. 143.

<sup>6</sup> *Ibid.* 2nd Series, III, pp. 163-4.

<sup>8</sup> *Ibid.* 2nd Series, III, pp. 178-81.

<sup>9</sup> See especially, *ibid.* 2nd Series, III, pp. 146-7.

<sup>10</sup> *Ibid.* 2nd Series, III, pp. 298-9.

<sup>11</sup> *Ibid.* 2nd Series, III, pp. 429-31, 433-7.

<sup>13</sup> *Ibid.* 2nd Series, III, p. 706.

<sup>3</sup> *Ibid.* 2nd Series, III, p. 141.

<sup>5</sup> *Ibid.* 2nd Series, III, pp. 159-60.

<sup>7</sup> *Ibid.* 2nd Series, III, pp. 165-6.

<sup>12</sup> *Ibid.* 2nd Series, III, pp. 695-703.

<sup>14</sup> *Ante*, pp. 30-2.



a kind of external leader of the Opposition caucus. She discussed with Mr Goschen the possibility of defeating Home Rule,<sup>1</sup> and suggested to Lord Salisbury a Coalition of Conservatives and Liberal Unionists.<sup>2</sup> "As this is no party question, but one which concerns the safety, honour, and welfare of her dominions" she expressed her admiration of and thanks for a speech by the leader of the Liberal Unionists in opposition.<sup>3</sup> She was informed by telegram of the proceedings of a great anti-Home Rule demonstration.<sup>4</sup> She again urged fusion of the Opposition, and Mr Goschen informed her that the best chance of success was a Conservative Government supported by the Liberal Unionists.<sup>5</sup> This letter was communicated to Lord Salisbury; but he, referring to a hint that the Queen might dissolve Parliament without advice, recommended that such a dissolution should be resorted to only on the advice of Mr Gladstone.<sup>6</sup>

However, it appearing likely that the Government would be defeated, Lord Salisbury wrote a long memorandum discussing what the Queen should do if Mr Gladstone advised a dissolution. This memorandum considered only the advantages which might accrue to the "party of resistance", and did not consider whether the Queen owed any duty to the Constitution.<sup>7</sup> This was followed by a conversation on the same subject between the Queen and Mr Goschen.<sup>8</sup> Lord Salisbury, in another letter, discussed motives quite openly. He spoke of "a decided probability that the Unionists will gain on a dissolution"; and accordingly he offered advice "at your Majesty's gracious invitation" to grant Mr Gladstone a dissolution.<sup>9</sup> When Mr Gladstone said that, if defeated, the Cabinet would probably advise a dissolution, the Queen at once said that she would sanction it.<sup>10</sup> This being done, the Government was defeated and the Queen, anxious for the return of her own party, asked Lord Rosebery to persuade Mr Gladstone to resign at once.<sup>11</sup> The Queen's party thus came into office once more, and her efforts for

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, pp. 83, 90-91.

<sup>2</sup> *Ibid.* 3rd Series, I, p. 98.

<sup>3</sup> *Ibid.* 3rd Series, I, p. 105.

<sup>4</sup> *Ibid.* 3rd Series, I, pp. 116-17.

<sup>5</sup> *Ibid.* 3rd Series, I, pp. 131-2.

<sup>6</sup> *Ibid.* 3rd Series, I, pp. 140-41.

<sup>7</sup> *Ibid.* 3rd Series, I, p. 102.

<sup>8</sup> *Ibid.* 3rd Series, I, pp. 111-14.

<sup>9</sup> *Ibid.* 3rd Series, I, pp. 128-30.

<sup>10</sup> *Ibid.* 3rd Series, I, pp. 134-5.

<sup>11</sup> *Ibid.* 3rd Series, I, pp. 159-61.

the next few years were directed to the cementing of the Unionist alliance and the keeping out of the Liberals.<sup>1</sup>

The Queen's judgment of the Gladstone period of office is summed up in language which Lord Beaconsfield might himself have used. "Lord Beaconsfield raised up the position of Great Britain from '74 to '80 in a marvellous manner. Mr Gladstone and Lord Granville pulled it down again during the five years of their mischievous and fatal misrule."<sup>2</sup>

On no constitutional principles can the Queen's conduct be defended. It cannot be expected that a monarch of strong views will be impartial given the atmosphere in which he is bred and in which he lives; it is to be expected that, normally, he will be more in sympathy with conservative than with other opinions. A progressive Government, in the political sense, must therefore expect opposition from the Throne. The King, on his side, is entitled to put his own views before the Government and to ask the Government to weigh them thoroughly. But if ministers insist, he must give way. (He is not entitled to identify himself with a particular set of measures or a particular set of party politicians. For, if he does, he himself becomes a politician, entitled to be criticised and attacked like other politicians.) The justification for his high position and the principles which have been established to keep his acts out of controversy will then have disappeared, and he must expect that steps will be taken to attune his position or his powers to the principles of democracy.

The Queen offended against these principles. She tried to thwart the policy which the Liberal Party had put before the electors in 1880 and which had secured for that party a large majority. She used her power to try to prevent the formation of a Liberal Government when the same party secured a majority in 1886. She intrigued with the leaders of the Opposition in an attempt to secure the defeat of the Government later in the same year. She acted as broker in the alliance between Conservatives and Liberal Unionists.

The subsequent monarchs appear to have taken a constitutional view

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, 1, pp. 172-4, 234-6, 617, 619.

<sup>2</sup> *Ibid.* 3rd Series, 1, p. 196.

of their functions. A phrase from a letter from the private secretary to the Prime Minister, referring to the Army reforms of 1905, is worth quoting. "The King cannot withhold his consent from the proposals which he is advised by the Cabinet to approve, but he cannot conceal his strong misgiving..."<sup>1</sup> Though George V insisted on seeing the leaders of the Opposition in 1910, he did so with the Prime Minister's consent, and he sought information, not assistance in defeating the Government.<sup>2</sup>

Mr Asquith in 1913 wrote a long memorandum on the rights and obligations of the Crown.<sup>3</sup>

We have now a well-established tradition of two hundred years, that, in the last resort, the occupant of the Throne accepts and acts on the advice of his ministers... He is entitled and bound to give his ministers all relevant information which comes to him; to point out objections which seem to him valid against the course which they advise; to suggest (if he thinks fit) an alternative policy. Such intimations are always received by ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter. But, in the end, the Sovereign always acts upon the advice which ministers after (if need be) reconsideration, feel it their duty to offer. They give that advice well knowing that they can, and probably will, be called upon to account for it by Parliament.<sup>4</sup>

This statement must be taken as applying to the ordinary functions of government. There are certain functions of the Sovereign which are not, or which are sometimes asserted not to be, exercised on ministerial advice. The most important of them is the appointment of a Prime Minister.<sup>5</sup> In addition, it is sometimes said that the dismissal of ministers and the dissolution of Parliament may be undertaken without the consent of the Government.<sup>6</sup> In relation to patronage and honours, too, the Sovereign exercises a substantial element of discretion.<sup>7</sup>

In relation to ordinary policy, the King's influence may be substantial, though it is rarely the determining factor. It is advisory and not

<sup>1</sup> Lee, *King Edward VII*, II, p. 206.

<sup>2</sup> *Post*, pp. 332-3.

<sup>3</sup> *Life of Lord Oxford and Asquith*, II, pp. 29-31.

<sup>4</sup> The rest of the memorandum deals with the dismissal of ministers, and is discussed in the next chapter, *post*, pp. 304-5.

<sup>5</sup> *Ante*, Chapter II.

<sup>7</sup> See *post*, Chapter XIII.

<sup>6</sup> See *post*, Chapter XII.

decisive. Whether the monarch has the ability to give effective advice is largely an accident of birth. There is no sociological presumption that the lineal descendant of the Electress Sophia of Hanover possesses greater intelligence than the foremost statesmen of the day. But frequently the Sovereign has more practical experience of affairs than the statesmen in control of the governmental machine. Disraeli, for once, was not exaggerating when he wrote:

For more than forty years your Majesty has been acquainted with the secret springs of every important event that has happened in the world, and, during that time, have been in constant communication with all the most eminent men of your Kingdom. There must, necessarily, have accrued to a Sovereign, so placed, such a knowledge of affairs and of human character that the most gifted must profit by an intercourse with your Majesty, and the realm suffer by your Majesty's reserve.<sup>1</sup>

On one occasion Queen Victoria informed Mr Gladstone of what the Duke of Wellington had told her about William Pitt. The Queen had had, by the end of the century, sixty years of public life. King Edward VII, as Prince of Wales, had substantial experience of governmental problems for twenty years before he came to the Throne. King George was in constant contact with the major political problems throughout twenty-five years, while the Prime Minister came into the Cabinet only fourteen years ago.

Moreover, the divinity that hedges a King places him in a strong position. "It is not for a subject to bandy civilities with his Sovereign", said Dr Johnson. "You cannot argue on your knees", it has been remarked. Far greater deference must therefore be accorded to the views of a King than would be given to similar views by other persons. Lord Salisbury said that he had four departments, the Prime Ministership, the Foreign Office, the Queen, and Randolph Churchill—"and the burden of them increases in that order".<sup>2</sup> When Sir William Harcourt remarked that he was going to have a tooth out, Mr Asquith said that he was in a similar plight, for he was going to see the King.<sup>3</sup>

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 146-7; cf. *Life of Disraeli*, II, p. 325.

<sup>2</sup> *Life of Robert, Marquis of Salisbury*, III, p. 180.

<sup>3</sup> Fitzroy, *Memoirs*, II, p. 524.

Yet there are disadvantages in the royal position. The first is that the King never takes responsibility. He is carefully shielded from it; for responsibility implies criticism, and criticism must detract from impartiality. Yet opinion divorced from responsibility is apt to be theoretical and extravagant. That Queen Victoria felt responsibility cannot be doubted; but, if she had been compelled to defend herself in Parliament, to carry public opinion with her, and to have attributed to her the death of those who were compelled to fight in "side shows", she might have been less prone to think of Great Britain as a fine fellow strutting up and down Europe like a peacock on the terrace at Hughenden.

Above all, a monarch must live in a highly artificial atmosphere. He is surrounded with deferential servants. If he is told the truth, it is wrapped up in deferential phrases and convenient platitudes. One cannot submit, with humble duty, that his Majesty is talking through his hat. The "Society" of which he is leader is remote from the needs and aspirations of ordinary people. However great his social sympathies—and it cannot be said that recent monarchs have not possessed them—his knowledge must percolate, if it can, through the most efficient filter that society has yet devised. Ordinary people are far off. Their needs become impersonal, statistical, and political, before they reach the foot of the throne.

Writing of Queen Victoria, Lord Gladstone said:

Prince Albert and Lord Beaconsfield alike had made her believe that continuity of high responsibility gave her knowledge and experience to which no passing minister could attain. . . . But in fact this continuity on the heights cut her off from all personal contact with the ideas of the people, and relieved her from the necessity of ever going to the roots of big questions by reason and argument. Politicians had to fight these things out in principle and detail on the platform, in the press, and in the House of Commons. They were in the continuity, not of the throne, but of arduous public life. . . . Discussion and inquiry produced stages in their minds and in the minds of the people, which were steps to progress. Continuity such as the Queen experienced, was a great disadvantage because in its constitutional irresponsibility it was out of touch with forward movements.<sup>1</sup>

<sup>1</sup> Lord Gladstone, *After Thirty Years*, p. 375.

Mr W. S. Blunt, whose judgment is not to be taken too seriously, said that the Queen was "easy to flatter and mislead, the only paper she read was the *Morning Post* and the people about her did not dare tell her the real truth of things".<sup>1</sup> However much a caricature, this statement represents a view which was widely held but rarely expressed. Sir Charles Dilke said on one occasion that as *The Times* had said that a speech of Mr Chamberlain's was too violent, the Queen would say so too.<sup>2</sup> Nor is it unlikely that the private secretary makes a choice of suitable reading-matter. On one occasion, certainly, General Grey told the Queen that she need not read a debate, but only the summary in *The Times*.<sup>3</sup> Yet *The Times* summary, like Dr Johnson, takes care that the Whig dogs do not have the best of it.

## § 2. Irresponsible Advisers.

The King must necessarily rely on what Lord Palmerston once called "Her Majesty's irresponsible advisers". "I do not know much of the interior side of court gossip," said Mr Gladstone, "but I have a very bad opinion of it, and especially on this ground, that while absolutely irresponsible it appears to be uniformly admitted to be infallible."<sup>4</sup> Goaded to unusual bluntness by the Queen's telegram *en clair* on the news of the fall of Khartoum, Mr Gladstone said that he "does not presume to estimate the means of judgment possessed by your Majesty".<sup>5</sup>

Those "irresponsible advisers" who have held official positions appear, so far as the means available permit of a judgment, to have uniformly acted with honesty and discretion. Sir Henry Ponsonby, on occasions, modified the consequence of the Queen's bias. Exactly what part Baroness Lehzen played is not clear. Baron Stockmar had some doubts about her influence.<sup>6</sup> Stockmar himself posed as an authority on the British Constitution, but frequently wrote nonsense.<sup>7</sup> One such

<sup>1</sup> W. S. Blunt, *My Diaries*, 1888-1914, p. 415.

<sup>2</sup> *Letters of Queen Victoria*, 2nd Series, I, pp. 395-6.

<sup>3</sup> *Life of Sir Charles Dilke*, II, p. 65. (She did say so.)

<sup>4</sup> *Life of Gladstone*, II, p. 254.

<sup>5</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 603.

<sup>6</sup> *Ibid.* 1st Series, I, p. 283.

<sup>7</sup> The best example is in the *Life of the Prince Consort*, I, pp. 314-15; see also the passage referred to in the next footnote and *ibid.* II, pp. 442-5, which would have made the Queen "permanent Premier".

statement<sup>1</sup> was said by Mr Gladstone, with unnecessary under-emphasis, to be based "mainly upon misconception and confusion, such as we should not have expected from a man of the Baron's long British experience, and acute perceptions".<sup>2</sup> Later on, he said with even greater truth, that "his constitutional knowledge was, after all, only an English top-dressing on a German soil".<sup>3</sup>

So long as Prince Albert lived, the Queen possessed an adviser of sagacity and discretion. The sycophancy of Sir Theodore Martin's *Life* has, by reaction, caused his judgment to be under-estimated. From the resignation of Lord Melbourne in 1841 to the death of the Prince in 1861, Prince Albert was, in substance, the monarch. After his death, the appointment of a private secretary became necessary, though it was not until 1867 that General Grey was formally gazetted to the post. There is no evidence that he, or any of his successors, failed to exercise his office with due discretion. Indeed, there is ample evidence to the contrary. Yet the views which they presented must necessarily have been clouded with personal bias. They have nearly all been military officers. Several of them were closely related.<sup>4</sup> Occasionally their personal views have been allowed to appear. Queen Victoria once referred to Sir Henry Ponsonby's "Whig friends".<sup>5</sup> In 1873 Sir Thomas Biddulph attacked Mr Cardwell's Army reforms and General Ponsonby defended them.<sup>6</sup> There was gossip in 1914 that Lord Stamfordham was against the Home Rule Bill.<sup>7</sup>

Private secretaries, however irresponsible in theory, occupy what they recognise to be a responsible position. They are aware that their office calls for discretion and impartiality. No such knowledge is possessed by the private persons who, for social reasons, may have the ear of the King. King Edward VII, as Prince of Wales, ascribed part of the Queen's antipathy to Mr Gladstone to Prince Leopold's Toryism.<sup>8</sup>

<sup>1</sup> *Life of the Prince Consort*, II, pp. 545-57.

<sup>2</sup> Gladstone, *Gleanings*, I, p. 75.

<sup>3</sup> *Ibid.* I, p. 84.

<sup>4</sup> See the remarkable genealogical table in Emden, *Behind the Throne*, p. 274.

<sup>5</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 48.

<sup>6</sup> *Ibid.* 2nd Series, II, p. 265-6.

<sup>7</sup> Addison, *Four-and-a-Half Years*, I, p. 28.

<sup>8</sup> Lee, *King Edward VII*, I, p. 514.

There are several examples where criticism by the Queen of Governmental action was based on private and obviously biased information.<sup>1</sup> We are told<sup>2</sup> that King Edward VII usually relied for his views on any subject on one person. Thus, Sir John Fisher was made principal naval aide-de-camp in order that he might have direct access to the King. Yet the Navy at this time was divided into two camps, for and against Fisher. Lord Esher had the ear of the King on military as well as on constitutional matters, so that the King's principal military adviser was a Conservative while his Government was Liberal.<sup>3</sup>

Mr Gladstone in 1892 made a general complaint. "At the present juncture, the views of your Majesty's actual advisers, although now supported by a majority of the people... are hardly at all represented, and as Mr Gladstone believes, are imperfectly known, in the powerful circles with which your Majesty has personal intercourse."<sup>4</sup> This was the inevitable result of 1885. When the Whigs joined with the Conservatives, the old division of Society, as it is called, disappeared. Henceforth, with a few exceptions, the upper classes supported the Conservative Party.<sup>5</sup> The Sovereign is necessarily associated with those classes, and is therefore dissociated from the ideas of any Liberal or Labour Government.

The balance can, to some extent, be redressed by a close association between the King and his ministers. For Queen Victoria, such an association was impossible. "The dignity of the Crown", said Mr Gladstone,<sup>6</sup> "requires that it should never come into contact with the public, or with the Cabinet, in mental deshabille." Of the Queen, Lord Esher wrote: "Her interviews with her most prominent and most powerful servants were of rare occurrence. Nearly the whole of the State business, with which she was so largely identified, was carried on by correspondence."<sup>7</sup> Even with her personal friends—Lord

<sup>1</sup> See e.g. *Letters of Queen Victoria*, 2nd Series, III, pp. 257-8, 267-8; and *ibid.* 3rd Series, I, pp. 465-6.

<sup>2</sup> Lee, *King Edward VII*, II, pp. 327-9.

<sup>3</sup> See *Esher Papers*, *passim*, especially vol. II.

<sup>4</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 172.

<sup>5</sup> Note the difficulty which Mr Gladstone and other Liberal and, above all, Labour ministers have had in finding Household officers.

<sup>6</sup> *Gleanings*, I, p. 73.

<sup>7</sup> Esher, *Influence of King Edward*, p. 42.



Melbourne, Sir Robert Peel, Lord Aberdeen, and Lord Beaconsfield—her relationships contained a substantial element of formality.

The methods of King Edward VII were different.

He was always accessible to his Ministers, and far more than half of the business transacted by the King was transacted orally, by personal interview. He enjoyed putting questions to his ministers, and he liked to state his own views, not in a formal document, but face to face with whom the matter concerned. It is true that he fortified himself for these interviews by frequently instructing his private secretaries to make enquiries, or to remonstrate against public acts or speeches of which he disapproved. But, in the long run, the King himself had his say, and unlike Queen Victoria, he had his say verbally.<sup>1</sup>

Moreover, much business was done by communications between the King and the Prime Minister's private secretaries. The institution of the telephone, too, has tended to make personal contacts less frequent.<sup>2</sup>

### § 3. *The Sovereign and the Cabinet.*

Nevertheless, an able monarch can have considerable influence in the policy of the Government. He is in close touch with the Prime Minister, and he reads the Cabinet minutes. He may, also, have outside sources of information. He can criticise governmental proposals and governmental acts. Though he must, in the last resort, accept a Cabinet decision, he is not bound to accept anything less. He can, therefore, insist on the submission of any question raised by a department; and he can raise any question, which ought, in his opinion, to be submitted to the Cabinet. The efficacy of his criticisms and proposals necessarily depends on their quality and upon the extent to which they conform with the political philosophy and Parliamentary position of the party in power. Nevertheless, these limitations are not so narrow that they do not give him a wide sphere of influence.

The King receives, and he has a right to receive, an account of every Cabinet meeting. It used to be written by the Prime Minister but now

<sup>1</sup> Esher, *The Influence of King Edward*, p. 43.

<sup>2</sup> See Lee, *King Edward VII*, pp. 48-9. King George's first contact with his future Labour ministers (other than those in the War Cabinet) was, apparently, in 1923. Mr MacDonald was invited to Buckingham Palace, and Messrs Clynes, Thomas and Snowden were invited to dine at Lady Astor's to meet the King and Queen: Snowden, *Autobiography*, II, pp. 661-2.

it is a copy of the Cabinet minutes. It was, until 1916, the only record of Cabinet decisions. King Edward sometimes complained that he received insufficient information. He desired of Mr Balfour that, "as of old, the length should run to four sides of a quarto sheet".<sup>1</sup> He also complained of Campbell-Bannerman's neglect.<sup>2</sup> On one such occasion, Lord Esher wrote:

According to the ancient usage which has prevailed for 60 years,<sup>3</sup> the fullest statement should have been placed before the King, anterior to any final decision. As it is, the King will know nothing until the decisions of the Cabinet are irrevocable, because to upset them would mean a change of Ministers. The practice which now governs the relations between the King and his ministers, if allowed to continue, must inevitably end in weakening the authority of the Crown.... The only solution is to get the King to write or dictate regularly and openly to his Prime Minister.<sup>4</sup>

This passage refers, of course, not to the letter which announces Cabinet decisions, but to the practice which Queen Victoria established of conducting a regular correspondence with her Prime Ministers, in which she expected that proposals would be put before her informally for her views before they reached the stage of Cabinet decisions. King Edward VII had no desire and little aptitude for business. Accordingly, the Prime Ministers neglected to keep him as closely in touch with proposals as they had done for his mother. The King can, if he so wills it, become a mere cipher. He can, on the other hand, take an effective part in government; if he desires to do so, he must devote himself to the business of government like Queen Victoria.

<sup>1</sup> *Lee, King Edward VII*, II, p. 47.

<sup>2</sup> *Ibid.* II, pp. 454-4, 466-7.

<sup>3</sup> It is apparently to be inferred that the practice of sending a Cabinet report originated with Sir Robert Peel. This is not the case, however. The practice is much older. Perhaps Lord Esher confused the Cabinet letter with the letter describing Parliamentary debates. The latter was first sent by Sir Robert Peel, at the Queen's request (*Letters of Queen Victoria*, 1st Series, I, p. 405) and was continued by his successors until 1893 (Guedalla, *The Queen and Mr Gladstone*, II, p. 459), when Mr Gladstone delegated the task to Sir William Harcourt. (*Letters of Queen Victoria*, 3rd Series, II, p. 216.) After Mr Gladstone's retirement, the Prime Minister again sent a letter. King Edward VII allowed the Home Secretary to send the Parliamentary letter, and King George V allowed the practice to lapse: *Lee, King Edward VII*, II, p. 47. Since the *Official Report* is available within a few hours, the letter is no longer necessary.

<sup>4</sup> *Esher Papers*, II, pp. 265-6.

It is a matter of controversy whether the Prime Minister ought, in writing of Cabinet discussions, to disclose to the Sovereign the divisions of opinion among Cabinet ministers. Mr Gladstone stated that in his reports and audiences the Prime Minister is bound "not to counterwork the Cabinet; not to divide it; not to undermine the position of his colleagues in the Royal favour. If he departs in any degree from strict adherence to these rules, and uses his great opportunities to increase his own influence, or pursue aims not shared by his colleagues, then, unless he is prepared to advise their dismissal, he not only departs from rule, but commits an act of treachery and baseness".<sup>1</sup> Elsewhere he said: "The Sovereign is to know no more of any differing views of different ministers than they are to know of any collateral of the monarchical office; they are an unity before the Sovereign; and the Sovereign is an unity before them."<sup>2</sup>

In so far as this suggests that the Prime Minister may not disclose that some members of the Cabinet are opposed to the desire or decision of the majority, it can hardly be said to be altogether consistent with practice. While some Prime Ministers, including Mr Gladstone himself, have generally refrained from such disclosures, others have not been so reticent.

Lord Melbourne discussed his colleagues' opinions with great freedom. In 1837, for instance, he told the Queen that Lord Howick, among others, held peculiar opinions on the policy to be followed in Canada.<sup>3</sup> In 1839 he described the "atmosphere" of a Cabinet, and again mentioned opposition by Lord Howick.<sup>4</sup> In 1840 minutes of dissent by Lord Clarendon and Lord Holland were attached to the formal Cabinet minute on the Egyptian Question.<sup>5</sup>

Sir Robert Peel and Sir James Graham had a discussion on the subject of formal minutes, and the latter mentioned that William IV was aware of differences of opinion in the Cabinet, and when an important step was taken he sometimes required proof of Cabinet agreement. Prince Albert remarked that this practice ought to be revived, since it was a

<sup>1</sup> Gladstone, *Gleanings*, 1, p. 243.

<sup>2</sup> *Ibid.* 1, pp. 74-5.

<sup>3</sup> *Letters of Queen Victoria*, 1st Series, 1, p. 127.

<sup>4</sup> *Ibid.* 1st Series, 1, pp. 184-5.

<sup>5</sup> *Life of Lord Clarendon*, 1, pp. 195-7.

great weakness of the Crown not to be able to follow the course of argument in the Cabinet.<sup>1</sup> Peel himself usually did not disclose Cabinet divisions.<sup>2</sup> For instance, he did not explain the lines of opinion on the Corn Laws in 1845.<sup>3</sup> Actually, the chief dissident, Lord Stanley, personally explained his opinions.<sup>4</sup> Later, when the Cabinet met again, after the failure of Lord John Russell to form a Government, Peel stated how far there was any dissent; but this was necessary in order to explain that Lord Stanley, and Lord Stanley only, would resign.

Lord John Russell generally did not disclose the names of ministers holding minority opinions; but occasionally he made an exception.<sup>5</sup> Of Lord Aberdeen's Government, Mr Gladstone has said: "From near presence, and close and constant intercourse, reaching far beyond established forms, they [the Queen and Prince Albert] knew not only the resolutions of the... Cabinet, but the interior mind of all those members of it who had special titles to exercise an influence on its foreign policy."<sup>6</sup>

Lord Aberdeen was almost "a friend of the family".<sup>7</sup> Lord John Russell addressed his complaints to the Queen as well as to others.<sup>8</sup> Sir James Graham was always available to give yet another account.<sup>9</sup> Lord Palmerston was usually more reticent. Mr Gladstone on one occasion asked him if names had been disclosed. Lord Palmerston replied: "No mention has ever been made, nor any allusion, to particular members of the Cabinet. The Cabinet has always been mentioned as an aggregate body."<sup>10</sup> But on one occasion at least, he departed from this practice.<sup>11</sup> Once, too, he committed the more serious offence of saying to the Queen that if the House of Lords destroyed Mr Gladstone's Paper Duties Bill "they would perform a good public service".<sup>12</sup> The Queen,

<sup>1</sup> *Peel Papers*, III, pp. 496-8.

<sup>2</sup> *Life of Sir James Graham*, II, p. 25.

<sup>3</sup> *Peel Papers*, III, pp. 234 *et seq.*; *Letters of Queen Victoria*, 1st Series, II, pp. 62-3.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, II, p. 64.

<sup>5</sup> E.g. *Life of Lord John Russell*, II, p. 137.

<sup>6</sup> Gladstone, *Gleanings*, I, p. 101.

<sup>7</sup> E.g. *Letters of Queen Victoria*, 1st Series, II, pp. 573-5; III, p. 27.

<sup>8</sup> E.g. *Ibid.* 1st Series, III, p. 26.

<sup>9</sup> *Life of Sir James Graham*, II, p. 208; *Letters of Queen Victoria*, 1st Series, II, pp. 552-4.

<sup>10</sup> Guedalla, *Gladstone and Palmerston*, pp. 258-9.

<sup>11</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 248.

<sup>12</sup> *Life of the Prince Consort*, V, p. 100.

however, was able to secure details of Cabinet discussions from Lord Granville<sup>1</sup> and Sir Charles Wood.<sup>2</sup> Lord Granville again acted as private informer in the Cabinet of 1868-74,<sup>3</sup> though perhaps with more justification, since he was trying to prevent the development of the growing hostility between the Queen and Mr Gladstone. Mr Gladstone in this Cabinet followed his own rule; for instance, he did not explain that the dissolution of 1874 was due to internal dissensions.<sup>4</sup>

Mr Disraeli, even as Chancellor of the Exchequer, gave the Queen full information.<sup>5</sup> As Prime Minister, he occasionally neglected to or refrained from doing so.<sup>6</sup> But this was contrary to his usual practice.<sup>7</sup> This was, no doubt, one of the many elements of his popularity at Court. The Queen could not fail to be annoyed at the change when his rival came into office in 1880. She complained at once that she had no information. In 1880 she telegraphed to Lord Granville making this complaint, and informing Lord Granville that she "must request Lord Granville either to tell her what truth there is in the statement [in the newspapers] as to dissensions or to induce Mr Gladstone to do so".<sup>8</sup> According to Sir Charles Dilke:

Mr Gladstone always held that the Queen ought not to be told about dissensions in the Cabinet, that Cabinets existed for the purpose of differing—that is, for the purpose of enabling ministers who differed to thresh out their differences—and that the Queen was only concerned with the results which were presented to her by, or in the name of, the Cabinet as a whole. This seems reasonable and ought, I think, to be the constitutional view; but the Queen naturally... hates to have personal differences going on of which she is not informed.<sup>9</sup>

<sup>1</sup> *Life of Lord Granville*, I, pp. 349-52, 469-70, 477; II, p. 123; *Letters of Queen Victoria*, 2nd Series, I, pp. 67-8, 69.

<sup>2</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 228.

<sup>3</sup> E.g. *Ibid.* 2nd Series, I, p. 622; III, pp. 246-7.

<sup>4</sup> *Ibid.* 2nd Series, III, p. 305.

<sup>5</sup> *Life of Disraeli*, II, pp. 229-31; *Letters of Queen Victoria*, 2nd Series, I, pp. 396-9, 413.

<sup>6</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 332-3; 335-6, 340.

<sup>7</sup> *Life of Disraeli*, II, pp. 1024, 1027, 1043-4, 1056, 1065-7, and many other references.

<sup>8</sup> *Life of Sir Charles Dilke*, I, pp. 346-7.

<sup>9</sup> *Ibid.*

After the death of General Gordon, General Ponsonby took a verbal complaint to Mr Gladstone, and then explained the latter's view to the Queen.

She listened carefully to all I repeated respecting the reporting of the opinions of members of the Cabinet but insisted that most Prime Ministers had fully informed her on the points. When I told her about Lord Palmerston she said it was true that he had never given her this information or if he ever did it had never been very accurate. Her Majesty still maintains that Lord Melbourne, Sir Robert Peel, Lord John Russell and Lord Beaconsfield always gave her an insight into the opinions of her ministers.<sup>1</sup>

As a result, Mr Gladstone gave her some indication of the shades of opinion in the Cabinet on the Irish question.<sup>2</sup>

But when Mr Gladstone proposed withdrawal from the Sudan, the Queen again complained to Lord Granville. "He is so reserved and writes such unsatisfactory letters, that the Queen never knows where she is. She does not know *who* takes his or other views (which all her predecessors kept her informed of)<sup>3</sup> and she is left powerless to *judge* the state of affairs."<sup>4</sup> As usual, the Queen sought a "spy", and Sir Henry Ponsonby wrote to Lord Rosebery, who had just joined the Cabinet as Lord Privy Seal, for his personal opinion.<sup>5</sup> In 1892 Lord Rosebery informed the Queen that he did not entirely agree with some of his colleagues, but asked her to keep the letter secret.<sup>6</sup> In 1893 he told her that he disagreed with his colleagues, whom he mentioned by name, and agreed with her.<sup>7</sup> In 1893 he wrote to the Queen to secure her assistance in pressing upon the Cabinet a more active policy in Egypt, and the Queen wrote to Mr Gladstone accordingly.<sup>8</sup> In 1892 Mr Gladstone himself informed the Queen that Lord Rosebery differed in opinion, but Lord Rosebery had already written to the Queen to that effect.<sup>9</sup>

<sup>1</sup> Guedalla, *The Queen and Mr Gladstone*, II, p. 352.

<sup>2</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 652-6.

<sup>3</sup> The list has lengthened; presumably this now includes Lord Palmerston as well as Sir Robert Peel, neither of whom usually disclosed divisions.

<sup>4</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 642-3.

<sup>5</sup> *Ibid.* 2nd Series, III, p. 640.

<sup>6</sup> *Ibid.* 3rd Series, II, pp. 159-60, 162.

<sup>7</sup> *Ibid.* 3rd Series, II, p. 211.

<sup>8</sup> *Ibid.* 3rd Series, II, pp. 216-17.

<sup>9</sup> *Ibid.* 3rd Series, II, p. 160.

With such occasional exceptions, Mr Gladstone followed his own rule to the end of his official career. He did not, for instance, give the Queen any hint that the Cabinet was divided on the Home Rule Bill in 1893.<sup>1</sup> Lord Rosebery, as Prime Minister, appears to have followed the same rule.

Lord Salisbury, on the other hand, appears to have followed Lord Beaconsfield's practice, though with greater discretion and with greater loyalty to his colleagues. In one of his earliest reports in 1885 he mentioned that Lord Randolph Churchill dissented from the Cabinet decision on one point.<sup>2</sup> Sometimes he mentioned that there was dissent without quoting names.<sup>3</sup> Sometimes, as on the Parnell Commission Bill, he did not mention divisions.<sup>4</sup> But usually he gave full information.<sup>5</sup>

On the practice of later Prime Ministers, little information is available. Mr Asquith quoted divisions and the names of those who differed on the Naval Estimates in 1909.<sup>6</sup> In 1910 Lord Morley informed Lord Esher that he did not agree with the Cabinet proposals, and Lord Esher informed the King.<sup>7</sup> In 1914 Mr Asquith did not inform the King (at least in writing) that some members contemplated resignation, until they had actually resigned.<sup>8</sup> But he mentioned the divisions on the subject of the use of reprisals at sea<sup>9</sup> and on Home Rule.<sup>10</sup> The question is now much less important because the King receives the Cabinet minutes, which indicate the competing opinions without stating who holds them.

The only conclusion which results from practice is that the extent of communication depends on the Prime Minister's discretion. The Sovereign naturally desires to know whether his point of view is represented in the Cabinet, and the strength of the contemporary parties. He

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, III, p. 685; and see p. 690.

<sup>2</sup> *Ibid.* 2nd Series, III, p. 685. See also p. 690.

<sup>3</sup> *Ibid.* 2nd Series, III, p. 711.

<sup>4</sup> *Ibid.* 3rd Series, I, pp. 433-4.

<sup>5</sup> *Ibid.* 3rd Series, I, pp. 10, 201-3, 211, 229.

<sup>6</sup> Lee, *King Edward VII*, II, p. 679.

<sup>7</sup> *Esher Papers*, II, pp. 453-5.

<sup>8</sup> *Life of Lord Oxford and Asquith*, II, pp. 81-3.

<sup>9</sup> *Ibid.* II, p. 131.

<sup>10</sup> *Ibid.* II, p. 219.

can urge his arguments with greater persistence if he knows that they are also being put in Cabinet. At the same time, there are several possible dangers. In the first place, it would be undesirable for the Sovereign to identify himself with a Cabinet minority. An identity of opinion would probably lead to an alliance, and the monarch would then be a disruptive element in the Cabinet and, if a secession took place, his position *vis-à-vis* the Cabinet would be difficult. Secondly, a Sovereign who supported the majority would probably take an unfavourable view of the minority. The Queen's opinion of Lord Randolph Churchill became immediately unfavourable because of his opposition on a point in the "Government of Caretakers" in 1885.<sup>1</sup> An even better example occurred in connection with the discussions about the deposition of Alexander of Bulgaria in 1886. The Queen was violently anti-Russian because "poor dear young Sandro" was a Coburg. Lord Salisbury mentioned that there was opposition in the Cabinet. The Queen, in reply, expressed the hope that Lord Salisbury would "not allow the two young men, comparatively ignorant and inexperienced in these affairs, to pretend to oppose what older, wiser heads understand and know is the only true policy for their country".<sup>2</sup> Knowing that there was opposition to her policy, the Queen a few days later reminded Lord Salisbury of his (wholly unconstitutional) advice to Lord Rosebery to bring as few Foreign Office matters before the Cabinet as possible.<sup>3</sup>

The best example of an alliance between the Sovereign and the Prime Minister against a minority of the Cabinet occurred during the Russo-Turkish War. The Queen was extremely belligerent.<sup>4</sup> In a letter full of underlinings and double underlinings, she announced that "Lord Derby *must* be overruled. . . as also Sir Stafford Northcote".<sup>5</sup> While the pressure of opposition in the Cabinet compelled the majority to consider each step carefully, a stream of hysterical letters poured out of Balmoral urging prompt and bellicose action.<sup>6</sup> She was even willing

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 687.

<sup>2</sup> *Ibid.* 3rd Series, I, p. 202.

<sup>3</sup> *Ibid.* 3rd Series, I, p. 211.

<sup>4</sup> *Ibid.* 2nd Series, II, pp. 559, 561-2, 567-8.

<sup>5</sup> *Ibid.* 2nd Series, II, p. 570.

<sup>6</sup> See especially *ibid.* 2nd Series, II, pp. 573-4.



to allow Lord Beaconsfield to make such use of her name as he desired.<sup>1</sup>

Even if the Queen's policy were right, such intervention in Cabinet discussions, especially with a Prime Minister so unscrupulous as Lord Beaconsfield, would be undesirable. It would lead necessarily to the attachment of a party label to the monarchy. The Crown possesses the advantage of remoteness from party strife. The King can study a question freed from the limitations imposed by public opinion and Parliamentary conditions. He is thus in a position to give a calm and judicial opinion on any policy which is put before him. To descend into the cockpit is to lose the advantage of independence and to arouse opposition to the monarchy itself among those who are unable to agree. Lord Derby, who led the Opposition in the Cabinet, subsequently joined the Liberal Party. It is certain that the knowledge that the Queen was an extreme jingo (as the Liberals would naturally put it) did not assist the smooth functioning of a Liberal Government.

It seems, therefore, that Mr Gladstone took a logically correct view in refraining from disclosing the details of Cabinet differences. But it cannot be said that the practice supports his rule. It supports, rather, the opposite rule. Lord Palmerston's practice and Mr Gladstone's rule led to communications between the Queen and other members of the Cabinet. Such communications were obviously unjustifiable. Lord Rosebery once said that "he conceives that it is the right of the Prime Minister to inform your Majesty with respect to what passes at Cabinet Councils, and he cannot be too careful of trenching on that privilege".<sup>2</sup> To have various sections of the Cabinet angling for the Sovereign's support would destroy all Cabinet order and decorum. The Cabinet is a committee where matters are discussed freely and privately in order that agreed solutions may be reached. Lord Melbourne in 1834 objected to a communication by Lord John Russell to William IV as "subversive of all the principles upon which the Government of this country has hitherto been conducted". The King replied that he "had never contemplated for a moment holding correspondence with any of

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 576.

<sup>2</sup> *Ibid.* 3rd Series, II, p. 162.

your colleagues, or with anyone, on questions affecting the Government, of the nature and extent of which the individual at the head of the Government should be ignorant".<sup>1</sup>

Sometimes the influence of the Sovereign can be used to mitigate Cabinet differences. In 1840 Lord Melbourne asked the Queen to use her influence with Lord Palmerston.<sup>2</sup> In 1855 the Queen and Prince Albert tried to induce the Peelites to support Lord Palmerston's Government;<sup>3</sup> and there are several similar examples. In 1867 she succeeded, by means of a personal request, in preventing General Peel from resigning from the Cabinet on account of the Reform Bill.<sup>4</sup>

Again, the Sovereign's influence is not limited to the consideration of matters put before her by the Prime Minister. She can herself raise questions. The Queen frequently asked for Foreign Office despatches to be submitted to the Cabinet.<sup>5</sup> In 1858, and on many other occasions, she asked the Prime Minister to bring before the Cabinet the question of the national defences.<sup>6</sup> The Instructions for the new Volunteer Corps were drawn up by Prince Albert, submitted to the Cabinet, and approved without alteration.<sup>7</sup> In 1872 the Queen raised the question of punctuality and safety on the railways.<sup>8</sup> In 1893 the Duke of Argyll asked the Queen to submit a memorandum to the Cabinet on the changes made in the Home Rule Bill.<sup>9</sup>

The Sovereign has, at least according to the Queen's practice, a right to be consulted on every major change of policy before it is publicly announced. In 1835 Lord Melbourne apologised for not having submitted the Irish Municipal Corporations Bill to the King before its introduction.<sup>10</sup> In 1859 the Queen was "shocked" to see that the Government moved for a Select Committee on Military Departments without

<sup>1</sup> *Lord Melbourne's Papers*, pp. 215-17.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, I, p. 304.

<sup>3</sup> *Ibid.* 1st Series, III, p. 125.

<sup>4</sup> *Ibid.* 2nd Series, I, p. 399.

<sup>5</sup> *Post*, pp. 280-1.

<sup>6</sup> *Letters of Queen Victoria*, 1st Series, III, p. 349.

<sup>7</sup> *Life of the Prince Consort*, IV, p. 437. So was a plan for the command of the Crimean Army in 1855: *Life of the Prince Consort*, III, pp. 381-4.

<sup>8</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 229-30.

<sup>9</sup> *Ibid.* 3rd Series, II, pp. 279-80.

<sup>10</sup> *Lord Melbourne's Papers*, pp. 307-8.

having previously communicated with her.<sup>1</sup> Lord Palmerston replied that it was merely the reappointment of a Committee set up in the previous Parliament.<sup>2</sup> In 1863 Lord Granville found that a Bill which touched the prerogative was about to be introduced without the Queen's sanction, and asked the Lord Chancellor to postpone it.<sup>3</sup>

In 1864 the Queen complained of Mr Gladstone's famous speech, in which he stated that every man was within the pale of the Constitution, as being imprudent and unconstitutional.<sup>4</sup> In 1890 she was so perturbed about the recommendation of the Hartington Commission to abolish the office of the Commander-in-Chief that she tried to prevent it from being discussed in Cabinet.<sup>5</sup> In 1894 she was so concerned with Lord Rosebery's attack on the House of Lords that she (unconstitutionally)<sup>6</sup> consulted Lord Salisbury. He advised that "on a matter of this vital importance he [Lord Rosebery] has no right to announce a totally new policy without first ascertaining your Majesty's pleasure on the subject, and if he is unable to convince your Majesty, it is his duty to tender his resignation".<sup>7</sup> The Queen thereupon complained to Lord Rosebery,<sup>8</sup> who replied that he

would never dream of proposing a constitutional revolution to the House of Commons without submitting it after mature consideration by the Cabinet, to your Majesty. But he would humbly deprecate the view that it is necessary for a minister, before laying a question before a popular audience, to receive the approval of the Crown. Such a principle would tend to make the Sovereign a party in all the controversies of the hour, and would hazardously compromise the neutrality of the Sovereign. But should a Ministry desire to present to Parliament a resolution of this kind, they would certainly be ignorant of the

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, III, p. 448.

<sup>2</sup> *Ibid.* 1st Series, III, pp. 448-9.

<sup>3</sup> *Ibid.* 2nd Series, I, pp. 77-8. This is, however, a special case, since the Bill affected the royal prerogative. As to this, see Mr Gladstone's resolution on the Irish Church (1868), *Letters of Queen Victoria*, 2nd Series, I, p. 517; *Life of Lord Granville*, I, pp. 523-5; and Lord Lansdowne's motion for restricting the prerogative of creating peers (1911), Asquith, *Fifty Years of Parliament*, II, p. 95.

<sup>4</sup> *Ibid.* 2nd Series, I, pp. 189-90.

<sup>5</sup> *Ibid.* 3rd Series, I, p. 577; see also pp. 582-4, 589, 594-5, 597-602.

<sup>6</sup> See *post*, pp. 282-3.

<sup>7</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 433.

<sup>8</sup> *Ibid.* 3rd Series, II, pp. 437-8.

first elements of their duty, did they neglect to obtain the sanction of the Sovereign to its being presented to the decision of Parliament.<sup>1</sup>

The answer to Lord Rosebery is that a fundamental change of policy ought not to be announced without the consent of the Cabinet. Before the decision is finally reached, the Sovereign should have the opportunity of expressing views and, if necessary, of trying to convince the Cabinet that the policy is wrong. On the other hand, Lord Salisbury's notion that if the Sovereign is not convinced the Cabinet should resign, is grotesque. If that were the case, there would never have been a Liberal Government after 1868. His letter shows the danger of private communication with opposition leaders; for Lord Salisbury desired the Liberals to resign in order that the Conservatives might hold a general election at which, as they rightly believed, they would obtain a majority.<sup>2</sup>

In 1901 the King complained that the Report of a Committee on the Royal Declaration against Transubstantiation had been published without his consent.<sup>3</sup> In 1905 the Government published the Curzon-Brodrick correspondence without his consent. Lord Esher said that such a thing would not have been possible "even under ministers as headstrong as Palmerston, or as truculent as Lord John Russell".<sup>4</sup> When, in 1906, Mr Lloyd George made a speech which seemed to promise a new "minister for Wales", the King protested that he had not been consulted.<sup>5</sup> Mr Lloyd George also attacked the House of Lords, and again the King protested.<sup>6</sup> When, in 1908, the King protested against a speech by Mr Lloyd George in favour of women's suffrage, Mr Asquith pointed out that the question was an open one in the Cabinet.<sup>7</sup>

#### § 4. *The Sovereign and the Departments.*

Such new policies are hardly distinguishable from matters discussed in Cabinet and matters decided by the departments. Of the former, it has been said already that the King receives full information. Of the

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 440.

<sup>2</sup> See *post*, pp. 286-8.

<sup>3</sup> Lee, *King Edward VII*, II, pp. 23-4.

<sup>4</sup> *Esher Papers*, II, p. 103.

<sup>5</sup> Lee, *King Edward VII*, II, pp. 455-6; *Life of Sir Henry Campbell-Bannerman*, II, pp. 313-14.

<sup>6</sup> Lee, *King Edward VII*, II, p. 456.

<sup>7</sup> *Ibid.* II, p. 653.

latter, it has now to be explained that the King is, or may be, in close touch with some of the departments and that where an act has to be done in his name and is of real importance, his pleasure may be taken before the act is done. The acts which are done in his name are, with a few exceptions, acts authorised by the "prerogative powers" vested in him by common law. They are exercised, in the main, by the Foreign Office, the Dominions Office, the India Office, the Colonial Office, the War Office, and the Admiralty. With these, and to a less extent the Home Office, the King may be in close touch. But, on the one hand, the extent of his active interest in their work must necessarily depend on his personality, and, on the other hand, there is nothing to prevent him from asking for information from any department in respect of any branch of its administration, and from criticising proposals and actions.

All Foreign Office despatches which bore the Sovereign's name were formerly approved by him, and no despatch bore his name unless his pleasure had been taken.<sup>1</sup> The obligation to secure prior approval was laid down in 1850 and 1851 in the dispute between Queen Victoria and Lord Palmerston. The Queen made complaints of Palmerston's failure to submit despatches from 1847 onwards.<sup>2</sup> In 1849 Lord John Russell suggested that drafts should be sent to him, as Prime Minister, before they were submitted to the Queen, so that the Queen might have his views on them. The Queen agreed, and the practice was adopted.<sup>3</sup> In 1850, acting on Stockmar's advice,<sup>4</sup> the Queen stated exactly what she expected from the Foreign Secretary.

She requires: (1) That he will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to *what* she has given her Royal sanction; (2) Having *once given* her sanction to a measure, that it be not arbitrarily altered or modified by the Minister; such an act she must consider as failing in sincerity towards the Crown, and justly to be visited by the exercise of her constitutional right of dismissing that Minister; She expects to be kept informed of what passes between him and Foreign Ministers before important decisions are taken, based upon that intercourse; to receive the foreign despatches

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 293-4.

<sup>2</sup> *Ibid.* 1st Series, II, pp. 132, 143, 153, 202.

<sup>3</sup> *Ibid.* 1st Series, II, pp. 262-4.

<sup>4</sup> *Ibid.* 1st Series, II, p. 282.

in good time, and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off.<sup>1</sup>

Lord Palmerston agreed to these rules.<sup>2</sup>

Nevertheless, the Queen had cause to complain again almost at once;<sup>3</sup> and his unauthorised communication to the French Ambassador, in defiance of a Cabinet decision approved by the Queen in a despatch, compelled Lord John Russell to ask for Lord Palmerston's resignation.<sup>4</sup> In the ensuing debate, Lord John Russell said: "I think that when, on the one hand, the Crown, in consequence of a vote of the House of Commons, places its constitutional confidence in a minister, that minister is bound, on the other hand, to the Crown, to the most frank and full detail of every measure that is taken, and is bound either to obey the sanction of the Crown, or to leave to the Crown that full liberty which the Crown must possess, of no longer continuing that minister in office."<sup>5</sup> The Foreign Secretary, he added, "can only act with the sanction of the Crown in matters of very great importance. In matters of small importance, I am ready to admit that the Secretary of State must be allowed to take a course which to him seems best, without a continual reference to the Crown".<sup>6</sup>

The practice of passing drafts through the Prime Minister's hands was criticised by Mr Gladstone<sup>7</sup> and appears not to have been followed.<sup>8</sup> But the Queen was careful to insist on the rule that all decisions should be submitted to her before they were acted upon. In 1852 she complained because a Protocol was signed without previous consultation with her.<sup>9</sup> In 1854 she complained that Lord Clarendon had not submitted despatches for approval before sending them off.<sup>10</sup> In 1862 she reminded

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 315.

<sup>2</sup> *Ibid.* 1st Series, II, pp. 315-16.

<sup>3</sup> *Ibid.* 1st Series, II, p. 321.

<sup>4</sup> *Ante*, pp. 157-60.

<sup>5</sup> *Parl. Deb.* 3rd Series, vol. 119, cols. 89-90.

<sup>6</sup> *Ibid.* col. 97.

<sup>7</sup> *Gleanings*, I, pp. 86-7.

<sup>8</sup> It was, however, explained to Lord Derby in 1852: *Letters of Queen Victoria*, 1st Series, II, p. 453.

<sup>9</sup> *Ibid.* 1st Series, II, p. 495.

<sup>10</sup> Frances Balfour, *Life of the Earl of Aberdeen*, II, pp. 219, 226.

Lord Russell of the rule that no drafts should be sent without the Queen's having first seen them.<sup>1</sup> Later complaints are numerous.<sup>2</sup>

It is evident from the *British Documents on the Origin of the War* that some, at least, of the Foreign Office despatches were submitted to Edward VII. It appears, however, that George V allowed the practice to lapse. Foreign Office despatches are circulated to the King at the same time as they are circulated to the Cabinet. All important despatches are marked "King, Dominions, Cabinet" and are accordingly printed and circulated. Thus, the King is kept informed, but has not that opportunity to influence action which Queen Victoria insisted on retaining.

On the creation of the new India Office in 1858 the Queen asked for the practice of the Office to be assimilated to that of the Foreign Office.

All despatches, when received and perused by the Secretary of State, to be sent to the Queen. They may be merely forwarded in boxes from the Office without being accompanied by any letter from the Secretary of State, unless he should think an explanation necessary. No draft of instructions or orders to be sent out without having been previously submitted to the Queen. The label on the boxes of the Office containing such drafts to be marked "For Approval". In cases of civil appointments the Secretary of State will himself take the Queen's pleasure before communicating with the gentlemen to be appointed. Copies or a *précis* of the minutes of the Council to be regularly submitted to the Queen. The Secretary of State to obtain the Queen's sanction to important measures previously to his bringing them before the Council for discussion.<sup>3</sup>

It appears, however, that, though the Council minutes were sent, the necessary papers were not forwarded. In 1898 the Queen suggested that the practice of sending minutes should be brought to an end, but that more information should be given her.<sup>4</sup> It was therefore decided that the minutes should no longer be sent, but that important despatches should be submitted and special reports made by the Viceroy.<sup>5</sup>

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 10.

<sup>2</sup> *Ibid.* 2nd Series, I, pp. 472, 476; 2nd Series, III, pp. 625-8, 649; 3rd Series, II, pp. 205, 207.

<sup>3</sup> *Ibid.* 1st Series, III, p. 380.

<sup>4</sup> *Ibid.* 3rd Series, III, p. 267.

<sup>5</sup> *Ibid.* 3rd Series, III, pp. 304-5.

The important decisions of the other "prerogative" departments and decisions especially affecting the Queen were also referred. The Queen used to sign every commission appointing an officer, but an Order in Council of 1862 provided that only the first commission should be under the sign manual.<sup>1</sup> She had previously requested the Commander-in-Chief (whose functions are now exercised by the War Office) to submit a descriptive list showing at a glance the purport of documents to be signed, "as is done with papers from other Government offices".<sup>2</sup> King Edward VII was much interested in military matters, and complained in 1904 that Mr Arnold-Forster had made changes in the War Office without discussing them with him.<sup>3</sup> Accordingly, the subsequent changes were submitted to and criticised by the King in great detail.<sup>4</sup> The King insisted that he receive the reports of the Army Council as well as of the Committee of Imperial Defence.<sup>5</sup> In the following year he complained that army proposals were submitted informally by letter from private secretary to private secretary, and that not enough time was allowed for consultation.<sup>6</sup>

The Queen complained in 1854 that decisions as to the placing of statues of royal personages were being taken by the Office of Works without her consent.<sup>7</sup> In 1862 she pointed out that Admiralty Regulations had been changed without her sanction. In 1904 the King complained that a decision as to Chinese labour had been taken by the Colonial Office without his authority;<sup>8</sup> and when under the new Government the Colonial Office abolished Chinese labour, his private secretary wrote: "His Majesty directs me to point out to you that it is his constitutional right to have any despatches of any importance especially those initiating or relating to a change of policy, laid before him prior to it being finally decided upon."<sup>9</sup> In 1906 he insisted that the Colonial Secretary should be summoned to the Privy Council in order that a Transvaal Order in Council should be explained to him.<sup>10</sup> The

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 33.

<sup>3</sup> Lee, *King Edward VII*, II, p. 200.

<sup>5</sup> *Ibid.* II, p. 200.

<sup>7</sup> Frances Balfour, *Life of the Earl of Aberdeen*, II, p. 200.

<sup>8</sup> Lee, *King Edward VII*, II, pp. 179-80.

<sup>10</sup> Fitzroy, *Memoirs*, I, p. 297.

<sup>2</sup> *Ibid.* 1st Series, III, p. 50.

<sup>4</sup> *Ibid.* II, pp. 200-3.

<sup>6</sup> *Ibid.* II, pp. 213-14.

<sup>9</sup> *Ibid.* II, p. 479.



practice as to the King's consent to the exercise of the prerogative of mercy was explained in 1903: "The usual routine in such cases was for the Home Secretary's decision to be communicated to the King in order that the royal pleasure might be taken, though the minister's decision took effect as soon as it was reached."<sup>1</sup> The slight difference here is due to the necessity of keeping the King's name out of the question.

### § 5. *The Influence of the Sovereign.*

Though papers be submitted and "pleasure" be taken, the influence of the Crown depends upon him who wears it. The Crown adds dignity but not capacity. The impress of Queen Victoria's personality is evident on every page of the political history of England during her long reign. She was a clog on the activity of every Liberal Government after 1841 and a stimulus to every Conservative Government after 1868. Whether her influence was, on the whole, for good or ill must be left to historians; and historians will come to their conclusions according to their initial assumptions.

Of her methods, many examples could be given. She induced ministers to alter despatches<sup>2</sup> and referred or compelled them to refer matters to the Prime Minister<sup>3</sup> or to the Cabinet.<sup>4</sup> She wrote long memoranda.<sup>5</sup> She once tried to persuade Sir William Harcourt, as minister in attendance, to alter the Queen's speech, though without effect.<sup>6</sup> King Edward's influence was much smaller. He rarely criticised or made suggestions,<sup>7</sup> though a few cases are known.<sup>8</sup> The influence of King George must be largely a matter of surmise. On the one hand there are those who assert that he exercised an important influence

<sup>1</sup> Lee, *King Edward VII*, II, p. 39.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, II, pp. 161, 221, 276, 277; 2nd Series, I, pp. 15-16, 83; 3rd Series, II, pp. 367-8.

<sup>3</sup> *Ibid.* 1st Series, II, pp. 160, 212, 221, 230, 235, 277, 308, 397, 412; 1st Series, III, pp. 470, 494, 496; 2nd Series, I, pp. 143-4.

<sup>4</sup> *Ibid.* 1st Series, II, pp. 298, 397; 1st Series, III, pp. 451, 453, 461, 464, 523, 562; 2nd Series, I, pp. 51, 83, 150; 2nd Series, II, pp. 642-4; 2nd Series, III, pp. 508-9.

<sup>5</sup> *Ibid.* 1st Series, II, p. 425; 2nd Series, I, p. 138.

<sup>6</sup> *Life of Sir William Harcourt*, I, pp. 598-600.

<sup>7</sup> *Life of Lord Lansdowne*, p. 293; Grey, *Twenty-five Years*, I, pp. 204-5.

<sup>8</sup> Lee, *King Edward VII*, II, pp. 205-7, 210-12, 699, etc.

during the Balkan War and in the settlement of the Irish problem in 1921. On the other hand, the published documents suggest that his influence on those occasions was small. It is, in present circumstances, impossible to generalise.

«Criticism and suggestion from a monarch are more effective than criticism and suggestion from a minister.» The majesty and isolation of the Throne give to the opinion of the occupier a value which bears little relation to their intrinsic merit. Tinsel becomes silver. Nevertheless, the King must, in the last resort, give way. Queen Victoria's last resort was sometimes rather far away. As Dr Sidney Herbert pointed out to Lord Granville in 1859, when the missionary zeal of the "two dreadful old men" in the cause of liberty was meeting strong opposition from Osborne, the position of a monarch when parties are evenly balanced is strong. "If we differ your opinion must give way to mine" is not an agreeable statement to hear, nor a prudent one to make to a person who has a good deal of indirect power and the spirit to use it if *poussée à bout*."<sup>1</sup> Lord Derby, on one occasion, made a delicate suggestion that he ought to resign.<sup>2</sup> Occasionally a hint appears that the ministers' resignation is the alternative to acceptance by the Queen of the tendered advice.<sup>3</sup> It is stated in a standard work that Queen Victoria "repeatedly had to yield on reminders that the alternative was the resignation of her ministers".<sup>4</sup> The published documents do not warrant such a sweeping statement. The Queen needed no such reminders. She was aware that, so long as a policy was supported by the Cabinet, she had no remedy. She was able to appeal from Lord Palmerston to Lord John Russell in 1850 and 1851. She appealed to the Cabinet, sometimes successfully, against Lord Russell and Lord Palmerston in the struggle for Italian independence in 1859 and in the Schleswig-Holstein question in 1864. Against Mr Gladstone there was no appeal, for the Cabinet was with him. Mr Gladstone never deigned to threaten resignation. He

<sup>1</sup> *Life of Lord Granville*, I, pp. 354-5.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, III, p. 406.

<sup>3</sup> *Ibid.* 1st Series, III, p. 472 (Lord John Russell—but the suggestion is very remote); *ibid.* 1st Series, III, p. 474 (Lord Palmerston).

<sup>4</sup> Anson, *Law and Custom of the Constitution*, vol. II, Part I (4th ed.), p. 54. The references do not bear out the statement.

recognised no right in the Crown to assume "independent power".<sup>1</sup> He was aware, and the Queen was aware, that, no matter how frequently the Queen said that she would "*never* consent" she was bound to give way. A refusal to consent would be tantamount to a dismissal of ministers, the exercise of a power which, if it existed,<sup>2</sup> would be fraught with consequences dangerous to the stability of the monarchy. King Edward's repeated assertions that, though he disagreed, he was bound to assent, were in accord with constitutional facts.<sup>3</sup>

The Sovereign's power to warn and advise is, nevertheless, important. Of even more importance is his power to render less acute the controversies of political life and to secure agreements "behind the Speaker's chair". For mediation demands tact, a quality which most monarchs possess, rather than ability and specialised knowledge, which they do not necessarily possess. This power has been exercised repeatedly during the past three reigns.

Queen Victoria's communications with the Opposition followed no rule. She created an unfortunate precedent when she continued writing to Lord Melbourne after his resignation in 1841. Even Baron Stockmar, who was given to exaltation of royal functions, thought that such a correspondence was "productive of the greatest possible danger".<sup>4</sup> But this gloomy prophecy was not fulfilled. Lord Melbourne had the good sense to restrict his correspondence to gossip and general constitutional instruction, and gradually the correspondence became less frequent until it ceased altogether. At no time was Lord Melbourne guilty of any intrigue against the Conservative Government.

This cannot be said of the Queen's correspondence with Lord Beaconsfield after 1880.<sup>5</sup> It began fairly tactfully, with only a little mild sarcasm at Mr Gladstone's expense. Within five months the Queen confided her anxieties over the Government's Eastern policy, sent an extract from a letter by Lord Granville on the state of parties, and ex-

<sup>1</sup> Gladstone, *Gleanings*, I, p. 233.

<sup>2</sup> See *post*, pp. 299-307.

<sup>3</sup> Morley, *Recollections*, II, p. 302; Lee, *King Edward VII*, II, pp. 42, 91-2, 385.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, I, p. 415.

<sup>5</sup> *Ibid.* 2nd Series, III, pp. 127 *et seq.*; *Life of Disraeli*, II, pp. 1414 *et seq.*

plained that she looked to Lord Beaconsfield for ultimate help.<sup>1</sup> Lord Beaconsfield naturally seized the opportunity to expound his own policy, and gave his own views on the state of parties. With these incursions into unconstitutional advice was mixed much very clever flattery.<sup>2</sup> Such a letter could have no other result than to stimulate the Queen's opposition to the Government. A fortnight later the Queen communicated confidential information of the Government's plans.<sup>3</sup>

Disraeli's biographers called this correspondence "a dangerous experiment".<sup>4</sup> It was far more: it was a constitutional innovation which went contrary to fundamental principles of constitutional monarchy. The Constitution assumes that, even if the Sovereign is not impartial, at least he will try to behave as if he were. If he is to become a definite supporter of a particular party, then the Constitution must provide alternate monarchs as it provides for alternate Governments. This complete acceptance of Conservative principles led inevitably to the attempt to keep out the Liberals in 1886.<sup>5</sup>

✓ The Queen relied much upon the advice of "elder statesmen" like the Duke of Wellington, Lord Lansdowne and Lord Aberdeen when there was difficulty in forming a new Government.<sup>6</sup> This was clearly unobjectionable. For though technically a retiring Government remains in office until its successor is appointed, the Sovereign does not act upon its advice, but takes a personal decision. That decision must depend on Parliamentary conditions, and advice from experienced statesmen is useful to the Sovereign and a check upon his personal prejudices.

The Queen occasionally asked Opposition leaders to support non-political proposals by the Government. Thus, in 1856, Lord Derby and Lord Lyndhurst agreed to support a Bill for settling the precedence of Prince Albert.<sup>7</sup> In 1863 she urged Derby to support the proposal to purchase the site and buildings of the Prince Consort's Exhibition of

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 143-4.

<sup>2</sup> *Ibid.* 2nd Series, III, pp. 144-7.

<sup>3</sup> *Life of Disraeli*, II, p. 1415.

<sup>4</sup> *Ibid.* II, p. 1414.

<sup>5</sup> *Ante*, pp. 30-3.

<sup>6</sup> See *ante*, Chapter II, pp. 39-40.

<sup>7</sup> *Letters of Queen Victoria*, 1st Series, III, pp. 249-50.

1851.<sup>1</sup> The Government was nevertheless defeated. In neither case did she act upon the advice of the Government or with its consent.

§ 6. *The King as Mediator.*

More important were her efforts to settle conflicts or to mitigate opposition to political proposals. In 1866 she wrote to Lord Derby to try to modify the opposition to Lord Russell's Reform Bill.<sup>2</sup> This effort failing, and a Conservative Government taking office as a result of the defeat of the Government, she tried to persuade Lord Granville to support the Conservative Bill of 1867.<sup>3</sup> In 1869 she tried to mitigate Conservative opposition to the Irish Church Bill in order to prevent a collision between the two Houses.<sup>4</sup> None of these steps was advised by the Government, though Mr Gladstone was subsequently informed of the last.<sup>5</sup> Also, while the Queen urged moderation on the Opposition, she at the same time urged moderation on the Government.<sup>6</sup>

In 1869 the Queen had previously arranged, at Mr Gladstone's request, an interview between the Prime Minister and Archbishop Tait.<sup>7</sup> But the Archbishop had been Mr Disraeli's nominee, and it was arranged that he should lead the Opposition in the House of Lords.<sup>8</sup> The Queen made further efforts to arrange a compromise.<sup>9</sup> The Archbishops did not vote on the second reading, which was accordingly passed. Archbishop Tait, however, had decided that substantial amendment was necessary, and the Queen again urged moderation.<sup>10</sup> The Bill, however, was substantially modified. The Archbishop continued to mediate and "was in almost hourly communication with the Queen".<sup>11</sup> Ultimately, an agreement was reached, the Bill passed, and a collision between the two Houses avoided. There has been some tendency to exaggerate the Queen's influence. The successful termination of the negotiations was largely due to Lord Cairns. Yet it is probable that the Queen's constant interventions played a large part in mini-

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 89.

<sup>2</sup> *Ibid.* 2nd Series, I, pp. 330-31.

<sup>4</sup> *Ibid.* 2nd Series, I, p. 603.

<sup>6</sup> *Ibid.* 2nd Series, I, pp. 605-16.

<sup>8</sup> *Ibid.* II, pp. 18-20.

<sup>10</sup> *Ibid.* II, pp. 34-6.

<sup>3</sup> *Ibid.* 2nd Series, I, pp. 411-12.

<sup>5</sup> *Ibid.* 2nd Series, I, p. 604.

<sup>7</sup> *Life of Archbishop Tait*, II, pp. 8-11.

<sup>9</sup> *Ibid.* II, pp. 20-28.

<sup>11</sup> *Ibid.* II, p. 39; see also *ibid.* pp. 41-2.

misgiving the hostility of the contestants. In any event, her intervention created a precedent which has since been followed on several occasions.

In 1872 the Queen wrote to Lord Russell, without Mr Gladstone's knowledge, to urge him not to move for papers on the Alabama question, so that the Government should not be embarrassed.<sup>1</sup> In 1877 she suggested to Lord Beaconsfield that she should appeal to the Opposition "to desist from constant questions as to what the Government is going to do".<sup>2</sup> Lord Beaconsfield's reply was made orally, but it appears to have been in the affirmative, for the Queen communicated through Lady Ely to Mr Forster and, through him, to Lord Hartington;<sup>3</sup> she also communicated directly with the Duke of Argyll.<sup>4</sup> In 1881 she asked General Ponsonby to see Sir Stafford Northcote and Lord Beaconsfield to secure agreement about the Government's proposals to meet Irish obstruction.<sup>5</sup> This step was apparently taken on her own initiative, but the Government had already been in communication with the Opposition. In the following year the Queen, again without Mr Gladstone's knowledge, appealed to Lord Salisbury and the Duke of Abercorn not to insist on an amendment to the Arrears Bill which, in Mr Gladstone's opinion, went to the root of the Bill. Lord Salisbury gave way.<sup>6</sup> Later in the same year she wrote to Sir Richard Cross regretting that the Conservatives moved a motion criticising the Government's action in handing over Arabi Pasha to the Egyptian authorities.<sup>7</sup>

The Queen's mediation was again very useful in the dispute between the two Houses over the Reform Bill of 1884. With Mr Gladstone's consent, she wrote to Lord Salisbury to urge a compromise.<sup>8</sup> This failing, she urged the Duke of Argyll to see Mr Gladstone, and ordered Sir Henry Ponsonby to read to Mr Goschen a memorandum written by Mr Gladstone.<sup>9</sup> Again with Mr Gladstone's consent, she saw the Duke

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 212. Lord Russell was not, however, in opposition.

<sup>2</sup> *Ibid.* 2nd Series, II, p. 532.

<sup>3</sup> *Ibid.* 2nd Series, II, p. 534.

<sup>4</sup> *Ibid.* 2nd Series, II, p. 538.

<sup>5</sup> *Ibid.* 2nd Series, III, p. 187.

<sup>6</sup> *Ibid.* 2nd Series, III, pp. 320, 325, 326.

<sup>7</sup> *Ibid.* 2nd Series, III, pp. 358-9.

<sup>8</sup> *Ibid.* 2nd Series, III, pp. 515, 518-19; for what follows, see also *Life of Gladstone*, III, pp. 130 *et seq.*

<sup>9</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 520-2, 531.

of Richmond, who saw Lord Cairns.<sup>1</sup> Lord Cairns made suggestions which were submitted to Mr Gladstone, the Duke of Richmond consulted Lord Salisbury, and in a long correspondence between Lord Salisbury and Mr Gladstone Sir Henry Ponsonby acted as intermediary.<sup>2</sup> Agreement was ultimately reached, and Lord Granville said that the Queen "must feel rather proud of the powerful influence which your Majesty has brought to bear upon the probable settlement of this burning question".<sup>3</sup> The Queen had in fact stimulated both sides to accept terms which would lead to a settlement.

In 1885 the Queen's mediation was again very useful in assisting in finding terms for an agreement by which Lord Salisbury could take office and remain in office until the Redistribution Act could take effect.<sup>4</sup>

The efficacy of these efforts obviously depended on the independent and, comparatively, impartial position of the Queen. That position had, however, already been undermined by her correspondence with Lord Beaconsfield after 1880. The efforts which she made to keep Mr Gladstone out after the election of 1885 demonstrated her complete partiality and therefore threatened her independence and her utility as a mediator. She appealed to the Whigs not to support Mr Gladstone.<sup>5</sup> After Mr Gladstone took office without them she continued her communications with Mr Goschen, urging the Whigs not to support Mr Gladstone, and sending his letters to Lord Salisbury.<sup>6</sup> Though the Government had been formed, she continued to communicate with Lord Salisbury and Mr Goschen.<sup>7</sup> In particular, she was aiming at a union between Conservatives and Whigs to defeat Home Rule, the major item of the Government's policy. This she urged upon Mr Goschen<sup>8</sup> and upon Lord Salisbury.<sup>9</sup> She expressed admiration of a speech by Lord Hartington and trusted "that these dangerous and ill-judged measures for un-

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 537, 539.

<sup>2</sup> *Ibid.* 2nd Series, III, pp. 542, 548 *et seq.*

<sup>3</sup> *Ibid.* 2nd Series, III, p. 577.

<sup>4</sup> *Ibid.* 2nd Series, III, pp. 670 *et seq.*

<sup>5</sup> *Ibid.* 2nd Series, III, pp. 709-18; 3rd Series, I, pp. 5-29.

<sup>6</sup> *Ibid.* 2nd Series, I, pp. 32-4.

<sup>7</sup> *Ibid.* 3rd Series, I, pp. 37, 41, 45, 49-50, 79, 90-91, 98, 101, III-12, II6-17, 128-30, 131-2, 134-5, 138.

<sup>8</sup> *Ibid.* 3rd Series, I, p. 91.

<sup>9</sup> *Ibid.* 3rd Series, I, p. 98.

happy Ireland will be defeated".<sup>1</sup> She wrote to Mr Goschen that "we must *not* mind this narrow party view (which is, moreover, NOT shared by the Conservatives!) and organise the opposition to these dangerous Bills separately, and then act together. That once effected, we shall see more clearly what can be done".<sup>2</sup> Mr Goschen explained in reply how the Liberals were trying to "sink party differences".<sup>3</sup> This letter was sent to Lord Salisbury, who proceeded to discuss whether the Queen could dissolve Parliament without Mr Gladstone's consent.<sup>4</sup> This reply was later elaborated into a full memorandum, which discussed whether the Queen should grant a dissolution if Mr Gladstone asked for one. This was discussed, not from the constitutional point of view, but simply as to the effect of a dissolution on the "party of resistance". Accordingly, he advised that the Queen should grant a dissolution.<sup>5</sup> Mr Goschen was of the same opinion.<sup>6</sup> Both agreed, on further reflection, "that the Unionists will gain on a dissolution".<sup>7</sup> Mr Gladstone did ask for a dissolution and mentioned, with unconscious irony, that the Opposition leader had very strongly urged it.<sup>8</sup>

Thus, the Queen was in league with the Opposition. She did not, it is true, communicate information about Mr Gladstone's plans. But she was engaged in negotiations with the Opposition. She was urging the union of the two wings of the Opposition and took advice from the leader of the Opposition as to whether she should dissolve without advice or refuse a dissolution in spite of the Government's advice. She was, in short, a member of the Unionist parties. These events are the best illustration of the remark made by Mr Chamberlain (before he became a Unionist) that she was, after all, the grand-daughter of George III.

The Queen's position was much less strong in 1893. She had no hope of organising an effective Opposition in the House of Commons, and she could rely only on the House of Lords. She asked Lord Hartington to write to Sir Henry Ponsonby if there was "anything

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 102.

<sup>2</sup> *Ibid.* 3rd Series, I, p. 112.

<sup>4</sup> *Ibid.* 3rd Series, I, pp. 116-17.

<sup>6</sup> *Ibid.* 3rd Series, I, pp. 131-2.

<sup>8</sup> *Ibid.* 3rd Series, I, p. 143.

<sup>3</sup> *Ibid.* 3rd Series, I, p. 113.

<sup>5</sup> *Ibid.* 3rd Series, I, pp. 128-30.

<sup>7</sup> *Ibid.* 3rd Series, I, pp. 134-5.



going on" about the Home Rule Bill, and when she was told that the Opposition desired to postpone the Bill, she wrote to Mr Gladstone suggesting postponement.<sup>1</sup>

Her successors took a more constitutional view of their duties. In the dispute between the House of Commons and the House of Lords over the Education Bill of 1906, King Edward drew attention to the precedent of 1869 and advised Sir Henry Campbell-Bannerman to get into touch with the Archbishop. Though the negotiations failed, he continued to press the Government to make concessions.<sup>2</sup>

In 1908, at Mr Asquith's suggestion, the King urged Lord Roberts not to raise a debate on the question of invasion.<sup>3</sup> In the dispute over the Finance Bill of 1909 the King asked Mr Asquith whether he would be acting within constitutional lines in taking it upon himself to give advice to and, if necessary, put pressure upon the Conservative leaders. "I replied that I thought what he was doing and proposing to do perfectly correct, from a constitutional point of view; that the nearest analogy was the situation and action of William IV, at the time of the Reform Bill; in both cases the country was threatened with a revolution at the hands of the House of Lords. He said that, in that case, he should not hesitate to see both Balfour and Lansdowne on his return to London."<sup>4</sup> The King saw both leaders, and found that no decision had yet been taken by them. He then apparently asked Lord Cawdor, who was prominent in Opposition, to write him a memorandum.<sup>5</sup>

Mr Asquith, it will be seen, justified the King's action by the precedent of 1832. Lord Esher advised the King similarly, but he mentioned also the precedents of 1869 and 1884.<sup>6</sup> None of them was directly in point, for the Bill had not at this time passed the House of Commons. In 1832, 1869 and 1884 the Bills had already been substantially amended in the House of Lords. Nevertheless, opposition between the two

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, II, pp. 236-7.

<sup>2</sup> *Life of Sir Henry Campbell-Bannerman*, II, pp. 301-5; Lee, *King Edward VII*, II, pp. 461-2; *Life of Randall Davidson*, I, pp. 524-9.

<sup>3</sup> *Esher Papers*, II, pp. 360-61.

<sup>4</sup> *Life of Lord Oxford and Asquith*, I, p. 257.

<sup>5</sup> Lee, *King Edward VII*, II, pp. 667-8.

<sup>6</sup> *Esher Papers*, II, pp. 413-16, 418-20. It is not always clear whether Lord Esher was referring to 1884 or 1885. The former provides the nearer analogy.

Houses was to be apprehended, and there seems nothing objectionable in the King offering his mediation before the crisis became acute. For, when once contestants have publicly announced their decisions, they frequently consider that they cannot withdraw without loss of prestige.<sup>1</sup> Mr Balfour, in private, expressed approval of the King's action.<sup>2</sup> After the rejection of the Bill by the House of Lords, and the moderate success of the Government at the first general election of 1910, the King again tried to secure some measure of agreement for passing the Bill, but without effect.<sup>3</sup>

After the second general election of 1910 and the introduction of the Parliament Bill, King George V desired to see the Opposition leaders. Mr Asquith objected. He had already placed his views on record in a memorandum in which he wrote:

It is not the function of a Constitutional Sovereign to act as arbiter or mediator between rival parties and policies; still less to take advice from the leaders on both sides, with the view to forming a conclusion of his own.<sup>4</sup> George III in the early years of his reign tried to rule after this fashion, with the worst results, and with the accession of Mr Pitt to power he practically abandoned the attempt. The growth and development of our representative system, and the clear establishment at the core of our Constitution of the doctrine of ministerial responsibility, have since placed the position of the Sovereign beyond the region of doubt or controversy.<sup>5</sup>

The King insisted, however, that he was not seeking advice, but desired to obtain knowledge at first hand of the views of the Opposition; and Mr Asquith reluctantly agreed. Lord Lansdowne expressed his agreement with the King's action. "I said that I could not conceive that there should be any impropriety in such conversations. As a constitutional Sovereign, his Majesty was no doubt obliged to be guided by his ministers, but the obligation did not seem to me in any way to preclude him from seeking information either as to questions of fact or as to matters of opinion."<sup>6</sup>

<sup>1</sup> *Esher Papers*, II, pp. 418-20.

<sup>2</sup> *Ibid.* II, p. 421.

<sup>3</sup> *Life of Lord Lansdowne*, pp. 388-9.

<sup>4</sup> This is reminiscent of Mr Gladstone's language: *Gleanings*, I, p. 233.

<sup>5</sup> *Life of Lord Oxford and Asquith*, I, p. 306.

<sup>6</sup> *Life of Lord Lansdowne*, p. 409.

This was clearly a different case from that of 1909. It cannot be doubted that, where opposition has arisen between the two Houses and is likely to lead to a deadlock, the King may, in spite of Mr Asquith's statement, act as mediator between the two sides. Exactly at what point he should ask to be allowed to intervene must always be a question of doubt. If he can intervene when the dispute has broken out, he can surely intervene, as in 1909, when a controversy is to be expected. To be able to intervene effectively he must know the opinions of both sides. His mediation will be ineffectual if it is too late. If it is too early he runs the risk of appearing to take sides in a purely party controversy. Mr Asquith's reluctance in 1911 was justified by the fact that the House of Lords had not yet indicated its decision as to the Parliament Bill, and by the fact that suggestions were being made that the King should refuse his consent to the Bill. On the other hand, no harm could be done by an interview which was limited to facts and opinions and was not directed towards the undermining of the Government's position.

In 1913 and 1914 the King made efforts to secure agreement on the Home Rule Bill.<sup>1</sup> It was largely due to his initiative that the controversy was narrowed down to the area and conditions of exclusion of Ulster. He invited leaders of both sides to Balmoral and encouraged them to speak frankly to each other.<sup>2</sup> It was he who, after many abortive conferences, persuaded Mr Asquith to see Sir Edward Carson once more.<sup>3</sup> On Mr Asquith's advice, he summoned the Home Rule Conference of July, 1914.<sup>4</sup> His speech to the Conference was sent to and approved by the Prime Minister, and was published by the Conference.<sup>5</sup> The Conference failed. But the King nevertheless played a part in the settlement of the Irish question. For the speech from the Throne on the opening of the Parliament of Northern Ireland, which was drafted by Mr Lloyd George, was the first step towards the negotiations between the British and Irish leaders which led to the "Articles of Agreement for a Treaty between Great Britain and Ireland" and the creation of the Irish Free State.

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, p. 28.

<sup>2</sup> *Ibid.* II, p. 34.

<sup>3</sup> Colvin, *Life of Lord Carson*, II, p. 287.

<sup>4</sup> *Life of Lord Oxford and Asquith*, II, pp. 53-4.

<sup>5</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, pp. 154-6.

Finally, there is some evidence that in 1916 Lord Stamfordham, as the King's private secretary, endeavoured to settle the dispute between Mr Asquith and Mr Lloyd George, which led to the resignation of Mr Asquith.<sup>1</sup>

It is, however, only in exceptional circumstances such as these that the King has a formal interview with Opposition leaders or that the private secretary can make less formal investigation of Opposition opinion. For the most part he must rely on their published speeches, on his knowledge of their views through their advice as ministers in previous Governments, and through the reading of Opposition newspapers. It is fairly obvious, for instance, that George V had very little knowledge of Labour Party opinions before 1924. He met most of the leaders for the first time at a private dinner party in 1923.<sup>2</sup> King Edward, on the other hand, had met some of the Liberal leaders privately before 1905, for they were "in Society".

The King's information is not, however, derived only from his reading of published matter and of Government documents and from his personal contacts. Queen Victoria encouraged all kinds of prominent public servants, such as Viceroy, Ambassadors, Governors, military and naval Commanders, to write to her personally. These messages did not pass through a Secretary of State. Indeed, when Lord Harrington suggested that her telegraphic messages to Generals should be transmitted through the War Office, she made the indignant comment: "She *won't* be a *machine*. But the Liberals always wish to make her *feel that*, and she *won't* accept it."<sup>3</sup> The Queen also conducted a large correspondence with foreign sovereigns. For, at the end of her reign, she could be described as "the Grandmother of Europe". So far as they dealt with policy, she usually submitted such letters to her ministers, or asked for their advice as to the replies. But the post-war decline of monarchy has clearly limited this field of activity.

<sup>1</sup> Addison, *Four and a Half Years*, I, p. 270. There is no mention of this in the *Life of Lord Oxford and Asquith*.

<sup>2</sup> Snowden, *Autobiography*, II, pp. 661-2.

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 594-5.

§ 7. *The King as a Social Figure.*

Finally, it must be remembered that the King is not merely part of the political machine. He is, too, an important part of the social structure. ✓ One would not emphasise this function so strongly as Walter Bagehot emphasised it.<sup>1</sup> The nature and importance of "Society" have changed during the present century. It is no longer of political importance. In political matters, "the City" has taken its place: and with this the King is not in contact. The social importance of the royal family must nevertheless not be underestimated. Bagehot said that monarchy was an intelligible system. We should perhaps put it that the monarchy personifies that elusive entity, the State, far more easily than any legal fiction. <It provides a focus for that patriotism which, even when it runs to extremes, is commonly regarded as a merit. This is of particular importance in a democracy. For the Government for the time being, though supported by a section of the people only, is the instrument of the whole. It is possible, therefore for opposition to the Government to be attacked as opposition to the nation. The Government, too, does nothing to destroy the idea. It parades the national flag and uses every opportunity to take to itself the title of "National". The ordinary individual appears to be on the horns of a dilemma. Either he must support the Government, or he must oppose the nation.

<The monarchy provides a simple means of demonstrating that the dilemma does not exist.> A person can be loyal to his King and yet oppose the Government. In 1914 the Liberal Government did not assert that, for reasons for which they were willing to explain, the Government had decided to send the army under its control to fight in France against an army under the control of the German Government, and that it desired recruits for that army. It simply said: "Your King and Country need you." Conservatives were able to "serve the King" and yet oppose some aspects of the Liberal Government's policy: It is not to be suggested, of course, that British people in 1914 were more "patriotic" than others. But patriotic fervour is more easily stimulated when "the King" declares war and asks for recruits for the "royal"

<sup>1</sup> *English Constitution*, ch. II.

forces. According to Mr Lloyd George, the King in 1917 enormously assisted the laying of industrial unrest by his visits to munition works and other places where suspicion of war motives was being aroused.<sup>1</sup>

In non-political matters the division between King and Government is even more obvious. The patronage of the King or of some other member of the royal family is an enormous asset to any charitable institution. It gives it a "national appeal" which no other person, however eminent, could give. His presence at ceremonies such as the laying of foundation stones, the launching of ships, and the opening of new works, enables people of opposing views to associate without suppressing their mutual opposition. In part, of course, he is asked to perform such ceremonies and to associate with charitable projects because of his "publicity value". A string of platitudes uttered by a prince commands more newspaper space than the most momentous pronouncement of a philosopher. Yet this too is a product of personal loyalty to the monarch. He is the national spokesman; and if he talks platitudes and not philosophy, it is because the nation talks platitudes and not philosophy.

Naturally, the Government is not averse from using the personal popularity of the Sovereign to strengthen its own popular appeal. It is certain that the Jubilee and Diamond Jubilee celebrations of 1887 and 1897 strengthened popular support for the imperialistic ideas of the Conservative Governments then in office.<sup>2</sup> It is certain, too, that the Silver Jubilee of 1935 strengthened the "National" Government, whose popular support had until then been rapidly diminishing.

Finally, one element in the personal position of the Sovereign must be mentioned, though it has little to do with the internal governmental system of Great Britain. The constitutional developments of 1911 to 1931, ending with the Statute of Westminster, have given the Dominions complete independence both in matters of legislation and in matters of policy. The unity which remains is one of sentiment (aided by common economic interests in some cases) only. That sentiment is immensely strengthened by common "allegiance" to the Throne. In most of the

<sup>1</sup> Lloyd George, *War Memoirs*, IV, pp. 1961-3.

<sup>2</sup> Cf. *Life of Joseph Chamberlain*, III, ch. LIV.

Dominions it would be impracticable for politicians to profess any allegiance which implied subordination to the United Kingdom. They can, however, profess at the same time allegiance to the Sovereign and their desire to maintain the complete independence of their own Dominion. The functions which the King performs in relation to the Dominions are negligible. The British Commonwealth of Nations is kept together by an idea; and that idea is personified in the Sovereign.

## CHAPTER XII

# The Personal Prerogatives: Dismissal of Ministers, Dissolution of Parliament, Creation of Peers

### § 1. *The Personal Prerogatives in General.*

The previous Chapter shows that, while the King has in normal circumstances "the right to be consulted, the right to encourage, the right to warn"<sup>1</sup> he must, in the last resort, give way to the advice of the Cabinet. There are, however, certain prerogative powers which he exercises on his own responsibility, and which may fitly be called "the personal prerogatives". Exactly what they are is by no means clear; for there are differences of opinion in respect of several of them. There is no controversy that he need not accept advice as to the appointment of a Prime Minister<sup>2</sup> or as to the creation of peers so as to override the opposition of the House of Lords. There is controversy as to whether he can dismiss a Government or dissolve Parliament without advice, or whether he can refuse to dissolve Parliament when advised to do so.

There have indeed been suggestions that other personal prerogatives survive. William IV seems to have suggested in 1834, after the burning of the Palace of Westminster, that he could summon Parliament to meet where he pleased. Lord Melbourne replied:

There can be no question that, as your Majesty states, it is your Majesty's undoubted prerogative to appoint the meeting of your Parliament, but this place of meeting has been upon the present spot so unvariably for so many years—ever since the time of Charles II, who summoned one Parliament under very peculiar circumstances at Oxford—that, without adverting to the possibility of the House of Commons not sanctioning any arrangement made at present by voting the sums necessary to defray the expense of it, it appears to Viscount

<sup>1</sup> Bagehot, *English Constitution* (World Classics edition, 1928), p. 67.

<sup>2</sup> *Ibid.*, pp. 36-40.



Melbourne that it would be highly inadvisable, and in some degree ungracious, to exercise this prerogative except after full consultation with the two Houses of Parliament.

He accordingly suggested that the Government should draw up a plan for submission to Parliament.<sup>1</sup> Lord Melbourne's reply was a polite and constitutionally correct intimation that the question was one between the Government and Parliament.

Mr Disraeli in 1852 considered that the Crown's right to refuse assent to legislation was still outstanding and was not "an empty form". "It is not difficult to conceive the occasion when, supported by the sympathies of a loyal people, its exercise might defeat an unconstitutional ministry and a corrupt Parliament."<sup>2</sup> Mr Disraeli had then had no experience of office and not very much experience of Parliament. The power had not, and has not, been exercised since the reign of Queen Anne. The King's pleasure is taken merely formally, in order that the letters patent creating the royal commission to assent to legislation may be sealed. Nevertheless, there were suggestions in 1913 that the King could refuse his assent to the Home Rule Bill, which was then being put through Parliament under the Parliament Act of 1911. Mr Asquith, in a memorandum, pointed out that the royal veto had not been exercised since early in the reign of Queen Anne.

We have now a well-established tradition of 200 years, that, in the last resort, the occupant of the Throne accepts and acts upon the advice of his Ministers. The Sovereign may have lost something of his personal power and authority, but the Crown has been thereby removed from the storms and vicissitudes of party politics, and the monarchy rests upon a solid foundation which is buttressed both by long tradition and by the general conviction that its personal status is an invaluable safeguard for the continuity of our national life.<sup>3</sup>

It is clear, as Mr Asquith also pointed out,<sup>4</sup> that the veto could be exercised only by the dismissal of the ministry. For no Government would accept a refusal to assent to a Bill without resigning. It is true that it is not impossible to imagine circumstances in which "an uncon-

<sup>1</sup> *Lord Melbourne's Papers*, pp. 213-14.

<sup>2</sup> Disraeli, *Life of Bentinck*, p. 45.

<sup>3</sup> *Life of Lord Oxford and Asquith*, II, pp. 29-31.

<sup>4</sup> *Ibid.* II, p. 31.

stitutional ministry and a corrupt Parliament" would exist. A fascist Government supported by a pliant majority might secure the passage of legislation to abolish the House of Commons, to unseat the Opposition, or to prolong the lifetime of Parliament indefinitely. Such acts would be tantamount to revolution, and constitutions do not and cannot contemplate revolutions. If such a situation arises, King—and people—will no doubt adapt Coke's language and decide to do what it is meet that King—and people—should do. So long as the Government has a majority in Parliament, and so long as Parliament has been properly elected and will need to seek re-election, there is no need for the exercise of the veto.<sup>1</sup>

In 1855, on the resignation of Lord John Russell, the Cabinet at once decided to resign. Lord Aberdeen saw the Queen, and at the next meeting of the Cabinet (for surrendering seals) informed them that the Queen had "peremptorily refused to accept the resignation of Aberdeen or of any of his colleagues. Her Majesty told Aberdeen, and commanded him to tell us, that our resignation under such conditions was unjust towards herself, injurious to our own character, and indefensible as regards the country."<sup>2</sup> This does not tally with Prince Albert's account of Aberdeen's audience. He says that "the Queen insisted... that Lord Aberdeen should make one appeal to the Cabinet to stand by her, which he promised to do to the best of his ability, but without hope of success."<sup>3</sup> Nevertheless, it has sometimes been assumed that the events constitute a precedent for the principle that the Sovereign can refuse to accept a resignation. The Duke of Argyll commented: "Although, of course, I was aware that it was part of the prerogative of the Crown to accept or refuse resignations, I had never realised it as a power likely to

<sup>1</sup> Most of the lawyers who supported the Unionist Party in 1913 agreed that the King could not "veto" the Home Rule Bill. They agreed instead that he could exercise his prerogative of dissolution. See Appendix IV, *post*, pp. 436-43. The veto would be, in the words of Mr George Cave (afterwards Lord Cave and Lord Chancellor), a "challenge to democracy". Professor Dicey, one of the most extreme Unionists at this time (he subscribed to the Ulster "covenant"), appears to have disagreed, for he quoted with approval Burke's language on the veto: see *post*, pp. 441-3.

<sup>2</sup> Duke of Argyll, *Autobiography and Memoirs*, I, pp. 517-18; see also Lady Frances Balfour, *Life of the Earl of Aberdeen*, II, pp. 281-9.

<sup>3</sup> *Letters of Queen Victoria*, 1st Series, III, p. 93.

be brought into practical use.”<sup>1</sup> Actually, the Cabinet reconsidered the matter and came to the conclusion that resignation was bad policy. The case is thus no precedent. If it were, it would be a bad precedent. The question whether the Cabinet can or cannot continue to command a majority is not one which the Sovereign can decide. Here the Cabinet could not, as the events showed; at the same time its determination was probably in its own interest, for even in 1855 an accusation that the Cabinet had “run away” would probably have been effective. In 1866 General Grey wrote to Mr Gladstone that the Queen “considers it the bounden duty of her Ministers, in the present state of the Continent, not to abandon their posts, for she *knows* that it would be impossible at this moment to form another Government which would command the public confidence”.<sup>2</sup> The Government resigned, however, and a Conservative Government was formed and remained in office until 1868.

In 1881 Lord Beaconsfield, in his capacity of irresponsible and unconstitutional adviser, informed the Queen:

The principle of Sir W. Harcourt, that the Speech of the Sovereign [in Parliament] is only the Speech of the Ministers, is a principle not known to the British Constitution. It is only a piece of Parliamentary gossip. The speech from the Throne must be approved in Council<sup>3</sup> by the Sovereign, but to be so approved, it should be previously considered by the Sovereign. Ample time ought to be secured to the Sovereign for this purpose, so that suggestions may be made and explanations required and given.

The degree of resistance which the Crown may choose to make against any expressions which the Crown disapproves, must depend upon circumstances. If, for example, there was a proposal to surrender Malta under an alleged engagement of the Treaty of Amiens, the Sovereign would, in all probability, be supported by the nation in resisting such a counsel. The unfortunate state of parties at this

<sup>1</sup> Duke of Argyll, *Autobiography and Memoirs*, I, pp. 517-18.

<sup>2</sup> Guedalla, *The Queen and Mr Gladstone*, I, p. 43.

<sup>3</sup> This is not so: the practice originated because it was convenient to hold a Council after a Cabinet meeting. Now that a Council meeting is rarely attended by more than two ministers, the argument no longer holds. Accordingly, though Queen Victoria regarded a proposal for a change as “revolutionary”, it was decided in 1921 that the King could approve the speech under the sign manual. See Fitzroy, *Memoirs*, I, p. 31, and II, pp. 756-7.

moment<sup>1</sup> limits the power of the Crown, but that is no reason why the constitutional prerogative of the Crown should be treated as non-existing. Even under the present circumstances, your Majesty has a right, which it would be wise always to exercise, to express your Majesty's opinion on every point of the policy of your Ministers and to require and receive explanations.<sup>2</sup> ✓

This clearly suggests that (the Sovereign could refuse to assent to an item in the King's speech, even to the extent of accepting the resignation of the Government, provided that there is some prospect of securing an alternative Government.<sup>3</sup> This is, in substance, the exercise of a power of dismissal. As to the King's speech, it has been universally accepted since 1841 as the statement of ministerial policy, for which the Sovereign accepts no personal responsibility. In 1841 Lord John Russell said in the House of Commons: "I thought that it was generally understood, that the Speech from the Throne was the Speech of Ministers.... The Speech was the result of advice of Ministers, and Ministers alone are responsible for it."<sup>3</sup>) In 1881 the Queen objected to a paragraph in the Queen's speech announcing the proposal to withdraw from Candahar. Lord Spencer and Sir William Harcourt, who were ministers in attendance, "impressed upon Sir H. Ponsonby that the Speech from the Throne was in no sense an expression of her Majesty's individual sentiments but a declaration of policy made on the responsibility of her Ministers".<sup>4</sup>

## § 2. *The Dismissal of a Government.*

(No Government has been dismissed by the Sovereign since 1782.<sup>5</sup>) The general impression in 1834 was that Lord Melbourne's Government was, to use Palmerston's expression, "turned out neck and crop".<sup>6</sup>

<sup>1</sup> I.e. the heavy defeat of Lord Beaconsfield's Government at the election of 1880.

<sup>2</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 181-2.

<sup>3</sup> *Annual Register*, 1841, p. 198. See also *Life of Lord Clarendon*, II, p. 138.

<sup>4</sup> *Life of Sir William Harcourt*, I, pp. 598-600. But the King's speech is in the same position as any other act of ministers; i.e. the King's sanction is necessary, but he must assent if his ministers insist. There was therefore nothing unconstitutional in the Queen's original refusal to sanction, since she gave way in the end.

<sup>5</sup> Though the resignation of the Whigs in 1807 was in substance a dismissal.

<sup>6</sup> Lytton, *Life of Viscount Palmerston*, II, p. 207; for similar expressions by Lord Brougham, see *Peel Papers*, II, p. 255, and by Greville, see *Greville, Memoirs*, 1st Series, III, p. 144.

The facts now available do not substantiate this conclusion, though they do not deny that the King might have dismissed his ministers if he had so pleased. The Whigs had already been weakened by the resignation of Lord Grey, Mr Stanley, and Sir James Graham, when the death of Earl Spencer transferred Lord Althorp to the House of Lords. Lord Melbourne had made Lord Althorp's adhesion a *sine qua non* to his acceptance of office on the resignation of Lord Grey, owing to the weakness of the Government in the House of Commons. The removal of the party leader in that House might be regarded as the removal of the foundation upon which the Government was built.<sup>1</sup>

Lord Melbourne therefore wrote to the King that "in the new and altered circumstances it is for your Majesty to consider whether it is your pleasure to authorise Viscount Melbourne to make such fresh arrangements as may enable your Majesty's present servants to continue to conduct the affairs of the country, or whether your Majesty deems it advisable to adopt any other course".<sup>2</sup> He added that he would never "abandon" the King, and that his services would "always be at your Majesty's disposal while they can be given honourably and conscientiously, and whilst your Majesty is pleased to deem them worthy of your acceptance".<sup>3</sup> But he entreated that "no personal consideration for him may prevent your Majesty from taking any measures or seek any other advice which your Majesty may think more likely to conduce to your Majesty's service and the advantage of the country".<sup>4</sup>

The King mentioned, in his reply, that he could not help feeling that the Government existed only by the support of the House of Commons, and that the loss of Lord Althorp's services in that House had to be viewed with that consideration in mind.<sup>5</sup> Lord Melbourne had an audience next day. He suggested that Lord John Russell might lead the House, but the King objected that he would make a wretched figure when opposed by Sir Robert Peel and Mr Stanley and that he favoured certain policies with which the King did not agree. Further, the King stated that the conduct of Lord Brougham had tended to shake his

<sup>1</sup> *Lord Melbourne's Papers*, p. 220.

<sup>3</sup> *Ibid.*

<sup>5</sup> *Ibid.* p. 222.

<sup>2</sup> *Ibid.*

<sup>4</sup> *Ibid.*

confidence in the Government. As to the former objection, Lord Melbourne observed that the King "would be at full liberty to refuse his assent to any measure submitted to him" and that Lord Melbourne and several of his colleagues had not committed themselves on the subject in question. Lord Melbourne did not, in any case, express any doubt as to his ability to carry on the Government. The King, however, believed that, in view of its resources in the House of Commons, the Government could not carry on satisfactorily, and that it would be broken up at a less convenient moment.<sup>1</sup> Accordingly, he wrote to Lord Melbourne "that he conceives that the general weight and consideration of the present Government is so much diminished in the House of Commons, and in the country at large, as to render it impossible that they should continue to conduct the public affairs in the Commons, and particularly when it is considered that the King's confidential servants cannot derive any support from the House of Lords which can balance the want of success in the Commons".<sup>2</sup> This communication was submitted to the Cabinet, whose members offered to remain in office until their successors were appointed. The King had already sent for the Duke of Wellington, who held the reins with Lord Lyndhurst while awaiting the arrival of Sir Robert Peel.

There are several peculiarities about these events which prevent them from being regarded as a precedent either for the dismissal of ministers or, indeed, for any principle at all. In the first place, the whole "atmosphere" is that of the eighteenth century; the fundamental change effected by the Reform Act was ignored. The King assumed that a Government with strong support in the House of Lords could ignore the opposition of the House of Commons. The Reform Act made such a position impossible, there was no example after 1834, and it is inconceivable to-day. Both the King and Viscount Melbourne assumed that the King's opposition was sufficient to prevent legislation upon which the Cabinet was agreed. Though Disraeli made the same assumption later on, it is no longer tenable.<sup>3</sup> Also, the King believed that he could

<sup>1</sup> The above is summarised from the King's own memorandum, printed in *Memoirs of Baron Stockmar*, I, pp. 329-35.

<sup>2</sup> *Lord Melbourne's Papers*, pp. 222-3.

<sup>3</sup> *Ante*, pp. 296-7.

resist the appointment of Lord John Russell, even if Lord Melbourne pressed it; that, too, would not be possible to-day.<sup>1</sup>

In the second place, there was no "dismissal". Lord Melbourne raised the question and left it to the King to say whether the Government should continue. No Prime Minister would take such a step to-day without consulting the Cabinet; and the Cabinet would not leave the King to decide a question which depends essentially upon expert knowledge of the temper of the House of Commons. Even so, it was not a dismissal; it was the acceptance of a contingent resignation.

In the third place, Lord Melbourne stated that he believed that the Government would have a majority in the House of Commons. No Sovereign would accept the responsibility of asserting the contrary when advised by his Cabinet or Prime Minister.

In the fourth place, a general election became necessary, and the Tory Government was defeated as soon as the new House met. In modern conditions, the King's action would have been a matter of acute controversy during the election, and his relationship with a Government which had achieved success at the polls would be extremely difficult.

Sir Robert Peel is reported to have said that "it was obvious that his Majesty's case was a bad one".<sup>2</sup> Mr Gladstone said that "the act was rash, and hard to justify".<sup>3</sup> Whether the case was good or bad, justifiable or unjustifiable, the conditions cannot be repeated to-day, and it cannot be regarded as a precedent.

Prince Albert laid down the "great axiom" that "the Crown supports frankly, honourably, and with all its might, the Ministry of the time, whatever it may be, so long as it commands a majority, and governs with integrity for the welfare of the country".<sup>4</sup> The latter qualification is perhaps susceptible of interpretation. It was, perhaps, that qualification which justified in Queen Victoria's mind her efforts to overthrow the Liberal Government of 1886.<sup>5</sup> It is nevertheless worthy of remark that she never tried to emulate or, as far as is known, even suggested, that she might emulate her royal uncle.

<sup>1</sup> *Ante*, pp. 49-53.

<sup>3</sup> *Gleanings*, I, p. 231.

<sup>5</sup> *Ante*, pp. 255-7.

<sup>2</sup> *Croker Papers*, II, p. 165.

<sup>4</sup> *Life of the Prince Consort*, I, p. 110.

In Canada, in 1873, a Royal Commission proved that there was corruption in Sir John MacDonald's Government. The Governor-General informed the Prime Minister that "he did not consider it his duty to intervene until Parliament should have dealt with the matter, but that inasmuch as the decision of Parliament might itself be partially tainted by the corruption exposed, he should hold himself free to require the resignation of the Ministers in the event of their winning by anything short of a very commanding majority". The Government thereupon resigned.<sup>1</sup> Lord Kimberley, the Colonial Secretary, appears to have thought that the Governor-General was bound to accept a vote of the Canadian House of Commons, but that he might have put a "gentle pressure" on the Government. The Queen would not accept this view of constitutional monarchy, and Sir Henry Ponsonby wrote that "Her Majesty . . . has always respected the obligations which exist between the Queen and her Ministry, but these obligations are mutual and honourable".<sup>2</sup>

Mr Gladstone appears to have thought, in 1878, that the right to dismiss still existed.<sup>3</sup> Mr Disraeli, writing to the Queen in the same year, stated the power much more explicitly.

If your Majesty's Government have from wilfulness, or even from weakness, deceived your Majesty, or not fulfilled their engagements to their Sovereign, they should experience the consequences of such misconduct, and the constitutional, and becoming, manner of their punishment is obvious. They cannot with their present Parliamentary majority in both Houses and the existing difficulties, as men of honour, resign, but your Majesty has the clear constitutional right to dismiss them.<sup>4</sup>

This was mostly rhetorical flourish, and he did not explain what was to happen if, with "their present Parliamentary majority", they were to be dismissed.

Disraeli's Colonial Secretary had some doubts on the subject when he had to take the responsibility for putting principles into practice. In the same year there was a dispute between the two Houses in Victoria.

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 288-9.

<sup>2</sup> *Ibid.* 2nd Series, II, pp. 291-2.

<sup>3</sup> Gladstone, *Gleanings*, I, pp. 230-2.

<sup>4</sup> *Life of Disraeli*, II, p. 1118.



The Legislative Council rejected the Appropriation Bill, and the Government of Victoria retaliated by dismissing civil servants, an act in which the Governor acquiesced. Sir Michael Hicks Beach advised the Governor that he must follow his ministers' advice, though in case of necessity he should take legal opinion.<sup>1</sup> In the following year a similar problem arose in Canada. The Lieutenant-Governor of Quebec had dismissed his ministers. The Dominion ministers thereupon advised the Governor-General to dismiss the Lieutenant-Governor. The Governor-General asked the Colonial Secretary if he was bound to accept the advice. Sir Michael Hicks Beach replied that all he could do was "to preach a constitutional homily for the benefit of the Dominion, and tell Lord Lorne [the Governor-General] that he must follow the advice of his ministers, if, after my homily, they persist in their views".<sup>2</sup>

The question did not become practical in England until 1913, when the Conservatives, enraged by their impotence against a Government which was imposing the Home Rule Act on them under the Parliament Bill, 1911, tried to find an ally in the Crown. Professor A. V. Dicey then wrote:

I entirely agree that the King can do nothing except on the advice of Ministers. I totally disagree with the doctrine drawn from this principle that he can never dismiss Ministers in order that he may ascertain the will of the nation. Of course, the incoming ministers must, like Sir Robert Peel, accept responsibility for the change of Ministry. No one need be ashamed of following the principle set by Pitt and Peel.<sup>3</sup>

In the course of his memorandum on the King's position in relation to the Home Rule Bill, Mr Asquith wrote:

The Sovereign undoubtedly has the power of changing his advisers, but it is relevant to point out that there has been, during the last 130 years, one occasion only on which the King has dismissed the Ministry which still possessed the confidence of the House of Commons. This was in 1834, when William IV (one of the least wise of British monarchs) called upon Lord Melbourne to resign. He took advantage (as we now know) of a hint improvidently given by Lord Melbourne himself, but

<sup>1</sup> *Life of Sir Michael Hicks Beach*, I, p. 70.

<sup>2</sup> *Ibid.* I, p. 65.

<sup>3</sup> Colvin, *Life of Lord Carson*, II, p. 240.

the proceedings were neither well-advised nor fortunate. The dissolution which followed left Sir R. Peel in a minority, and Lord Melbourne and his friends in a few months returned to power, which they held for the next six years. The authority of the Crown was disparaged, and Queen Victoria, during her long reign, was careful never to repeat the mistake of her predecessor....

Nothing can be more important, in the best interests of the Crown and of the country, than that a practice, so long established and so well justified by experience, should remain unimpaired. It frees the occupant of the Throne from all personal responsibility for the acts of the Executive and the legislature. It gives force and meaning to the old maxim that "the King can do no wrong". So long as it prevails, however objectionable particular Acts may be to a large section of his subjects, they cannot hold him in any way accountable. If, on the other hand, the King were to intervene on one side, or in one case—which he could only do by dismissing ministers in *de facto* possession of a Parliamentary majority—he would be expected to do the same on another occasion, and perhaps for the other side. Every Act of Parliament of the first order of importance, and only passed after acute controversy, would be regarded as bearing the personal *imprimatur* of the Sovereign. He would, whether he wished it or not, be dragged into the arena of party politics; and at a dissolution following such a dismissal of ministers as has just been referred to, it is no exaggeration to say that the Crown would become the football of contending factions.

This is a constitutional catastrophe which it is the duty of every wise statesman to do the utmost in his power to avert.<sup>1</sup>

Reasons have been given above for asserting that the precedent of 1834 is no precedent for the dismissal of ministers in modern conditions. Mr Asquith's statement, so far as it goes, is incontrovertible. It does not, however, meet the point which was made by Unionists in 1913 and mentioned by their most expert constitutional lawyer, that the King has the right to dismiss ministers if he has reason to believe that their policy, though approved by the House of Commons, has not the approval of the people. Such an argument, it must be confessed, is an argument for a dissolution and not for a dismissal of ministers. If the King believes that the Government has lost its majority, and if it is any concern of his, his obvious step is to ascertain whether his assumption is

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, pp. 30-31.

correct and to insist upon a dissolution. If ministers refused to "advise" the dissolution in Council they would resign; and if they did not resign he could dismiss them.

But is it his duty to make such an assumption? Is he sufficiently in touch with public opinion to be able to form a judgment? It is suggested that the answer to the second question is in the negative. Though his "splendid isolation" makes him more impartial than most, it also keeps him away from the movements of opinion. He can judge only from newspapers, from by-elections, and from his own entourage. Of the first, it is enough to say that even the unanimous opposition of London newspapers would be no criterion. Of the second it can be said that by-elections (as Mr Disraeli discovered) are apt to prove deceptive, especially to one far removed from them. Of the third it must be asserted that it is always more biased and less well-informed than the King himself. ✓

Nor is it his business to anticipate the decision of the electorate. Every Government takes decisions which would not be approved by the electorate. It is neither practicable nor desirable that an election should be held whenever it is suspected that a particular decision is not approved.<sup>1</sup> The electorate is asked to approve not a particular decision but a course of policy. It is asked to approve such policy at intervals of four or five years, if not more frequently. If the King selects decisions which seem to him to be important, his selection must depend upon his subjective notions, which it is his duty, as an impartial Sovereign, to ignore. If he selects because of the vehemence of the Opposition, he invites all Oppositions to be vehement.

The Home Rule Bill differed from some other Government decisions in that, once accepted, its policy could hardly be reversed. It would not have been practicable for the Conservatives to have abolished Home Rule if the war had not intervened and they had taken office in 1915. In this it was not so exceptional as was sometimes argued. Nearly every decision of foreign policy or of Dominion or Colonial policy, every

<sup>1</sup> It is certain that the vast majority of the electorate disapproved of the "peace proposals" made by the British and French Governments to Italy and Abyssinia in December 1935. Ought the King to have dismissed his ministers?

constitutional change, and even such a matter of internal policy as the imposition of a general tariff or a fundamental modification of the system of taxation, is of a kind that cannot immediately be reversed. Home Rule had been a policy of the Liberal Party from 1886 to 1910 even if, as the Conservatives alleged, it was not specifically submitted to the country in 1910. But, even if a fundamental change of policy is made without a "mandate",<sup>1</sup> all the considerations urged by Mr Asquith suggest that it is not for the King to intervene, except by warnings and protests. It is inevitable that a Sovereign who dismisses ministers or compels them to resign should be regarded as the ally of the Opposition, and as such be made the subject of attack.<sup>2</sup>

The King's function is, it is suggested, to see that the Constitution functions in the normal manner. It functions in the normal manner so long as the electors are asked to decide between competing parties at intervals of reasonable length. He would be justified in refusing to assent to a policy which subverted the democratic basis of the Constitution, by unnecessary or indefinite prolongations of the life of Parliament, by a gerrymandering of the constituencies in the interests of one party, or by fundamental modification of the electoral system to the same end. He would not be justified in other circumstances; and certainly he would not have been justified in 1913.

### §3. *The Dissolution of Parliament.*

By the Septennial Act, 1715, as amended by section 7 of the Parliament Act, 1911, a Parliament "shall and may...have continuance for five years and no longer, to be accounted from the day on which by the writ of summons...(such) Parliament shall be appointed to meet, unless...such Parliament...shall be sooner dissolved by His Majesty, his heirs or successors". In practice a Parliament is dissolved by the King, on advice, before the five years elapse; and the experience of 1929 and 1935 suggests that few Parliaments are likely to last much more than four years. In 1923, 1924 and 1931 Parliaments were dissolved, for

<sup>1</sup> *Post*, pp. 388-90.

<sup>2</sup> As the Archbishop of Canterbury said, it would be "gambling in the most dangerous manner, with the King as Stakes". *Life of Randall Davidson*, I, pp. 626-7.

political reasons, long before their normal periods expired. The Parliament elected at the end of 1910 was prolonged by legislation until 1918, owing to the undesirability of an election in time of war.

Three questions are raised by the exercise of this prerogative. The first relates to the advice upon which it is exercised. The second is whether the King is constitutionally bound to accept such advice. The third is whether the King can dissolve Parliament without advice. The last can be disposed of shortly. A dissolution involves the acquiescence of ministers. For it necessitates an Order in Council, and the Lord President accepts responsibility for summoning the Council; and it necessitates a Proclamation and writs of summons under the Great Seal, for which the Lord Chancellor accepts responsibility. Consequently, the King cannot secure a dissolution without "advice"; and if ministers refuse to give such advice, he can do no more than dismiss them.)

Queen Victoria, in her anxiety to prevent the passing of a Home Rule Bill, seems to have ignored this obvious fact. In 1886 she made vague suggestions in her correspondence with Mr Goschen and Lord Salisbury that she might dissolve Parliament on her own responsibility. Lord Salisbury replied that "a dissolution, if resorted to, should take place on the advice of Mr Gladstone, according to the usual practice; for the present House of Commons was summoned on Lord Salisbury's advice".<sup>1</sup> In 1893 she asked the Duke of Argyll to

see Lord Salisbury and the Duke of Devonshire upon some important points as to the future course of action, after the House of Lords have thrown out what I consider a foolish and terrible Bill. I thought that if Mr Gladstone did not resign, but wished to introduce it again, I ought to insist on a dissolution on the Home Rule Bill. This, the Duke of Argyll says, I should be quite justified in doing, though he was not sure of the prudence of doing so.<sup>2</sup>

Later, she said,

on the particular point of my insisting on a dissolution he [the Duke of Argyll] said Lord Salisbury was of the opinion I had undoubted right to do so, and that it might come to this, but thought the time had not yet come for such a step. The Duke of Devonshire shared this opinion, but

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, p. 117.

<sup>2</sup> *Ibid.* 3rd Series, II, p. 279.

on the other hand Mr Chamberlain, to whom the Duke of Argyll had also spoken on the subject, was anxious for this very course—even suggesting it.<sup>1</sup>

Lord Salisbury put the matter in its proper perspective:

A dissolution by the Queen, against the advice of her ministers, would, of course, involve their resignation. Their party could hardly help going to the country as the opponents of the royal authority; or, at least, as the severe critics of the mode in which it had been exerted. . . . There must be *some* hazard that, in the end, such a step would injure the authority of the Queen. It ought not, therefore, to be taken unless there is an urgent reason for taking it. No such reason exists at present. It may ultimately be necessary in order to escape from a deadlock.

He added what was probably with the Queen a more cogent argument, that a dissolution in the summer offered a better chance of success to the Conservative Party, and stated: "If, after the Bill has been rejected by the Lords a second time, a dissolution is still refused, the motives for approaching the Queen by petition to exercise her prerogative will become very cogent."<sup>2</sup>

The Liberal Government decided not to introduce the Bill a second time. In 1894 the Queen again raised the question when Lord Rosebery began attacking the House of Lords. She sent a copy of Lord Rosebery's letter to Lord Salisbury ("*very private*") without the Prime Minister's knowledge, and asked: "Would it not be right to warn Lord Rosebery that she cannot let the Cabinet make such a proposal without ascertaining first whether the country would be in favour of it, which she does not believe?" She asked, also: "Is the Unionist Party fit for a dissolution *now*?"<sup>3</sup> Lord Salisbury replied that the Government had no right to announce a policy without the Queen's consent, that the Queen would be justified in requiring that the country should be consulted before a decision in so grave a matter was taken, and that the Unionist Party was quite prepared for a dissolution.<sup>4</sup>

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 282.

<sup>2</sup> *Ibid.* 3rd Series, II, pp. 297-9.

<sup>3</sup> *Ibid.* 3rd Series, II, p. 431.

<sup>4</sup> *Ibid.* 3rd Series, II, p. 433; see also the opinions of Sir Henry James, the Duke of Devonshire, and Mr Chamberlain, *ibid.* pp. 442-5.

Lord Salisbury clearly contemplated that the Queen's insistence would certainly compel the resignation of the Government. It is in fact impossible that a dissolution should be carried out without their concurrence. What the Queen was really asking was whether she would be justified in dismissing her ministers, and whether the result would be a return to office for a substantial period of her own party. The question, in short, is one of dismissal and not of dissolution.<sup>1</sup>

The above material was not available in 1913, when the question was hotly debated.<sup>2</sup> Nor, strange to say, did any of the eminent constitutional lawyers who contributed to the debate state the obvious fact—that a dissolution without the intervention of ministers was impossible—though it was assumed by some that a decision to dissolve would in fact produce the resignation of the Government. The Home Rule Bill had been passed by the House of Commons in two successive sessions and had been rejected by the House of Lords in each of these sessions. The Unionists complained that the Government had received no mandate for the Bill in 1910 and therefore demanded a dissolution before the Bill was submitted to the House of Commons the third time and passed under the Parliament Act, 1911. In part, their plea was to Mr Asquith to advise a dissolution; but, realising that Mr Asquith was not likely to accept their advice, they also discussed the power of the King to dissolve without "advice" for that purpose.

Mr George Cave started the argument by asserting that no reproach could be levelled against a decision of the Sovereign to satisfy himself that the House of Commons "does indeed represent the democracy of to-day".<sup>3</sup> *The Times* replied that the prerogative of dissolution was "atrophied by disuse", and that "it is a first principle of our Constitution that the King acts solely on the advice of his Ministers"; and it further pointed out that, since the Government might secure a majority at the general election, the result might be "an apparent disagreement between the occupant of the Throne and the majority of his people".<sup>4</sup>

Sir William Anson was not willing to admit that the prerogative was

<sup>1</sup> As to which, see *ante*, pp. 299-307.

<sup>3</sup> *Post*, p. 437.

<sup>2</sup> See Appendix IV, *post*, pp. 436-43.

<sup>4</sup> *Post*, pp. 437-8.

"atrophied by disuse". But he admitted that the advice of ministers was constitutionally necessary, and said that it would be necessary for the King to ascertain beforehand (*semble*, by communications with the Opposition if the Government would not consent) "whether an alternative Ministry was willing to accept the responsibility for a dissolution".<sup>1</sup> Lord Hugh Cecil used the same argument, and reinforced it by a citation of precedents.<sup>2</sup> Professor A. V. Dicey also agreed with Sir William Anson, and analysed the question in his usual methodical manner.<sup>3</sup> Professor J. H. Morgan, however, emphasised that "such an independent decision on [the King's] part would almost inevitably be equivalent to a dismissal of his ministers", that the conduct of an election under such circumstances and its effect on the position of the Sovereign "would be such as no loyal subject could contemplate without misgiving", and that if once a dissolution were effected by the King's personal choice "no dissolution would be free from ambiguity, and speculation as to the degree of responsibility of the Sovereign would be a feature of every election".<sup>4</sup>

There cannot be the least doubt that Professor Morgan was wholly in the right. Either the King "persuades" his ministers to "advise" a dissolution (in which case *cadit quaestio*) or ministers resign. In other words, the King cannot exercise his prerogative of dissolution without "advice"; he can only dismiss his ministers. His power to do this has already been discussed;<sup>5</sup> and Professor Morgan's arguments against it are, it is submitted, entirely convincing.

"Advice", then, is necessary. The advice to dissolve was, at least until recently, submitted by the Prime Minister on the decision of the Cabinet. Lord Oxford and Asquith laid down the rule absolutely: "Such a question as the dissolution of Parliament is always submitted to the Cabinet for ultimate decision."<sup>6</sup> So far as can be ascertained, every decision to dissolve, from 1841 to 1910 inclusive, was taken by the Cabinet. In 1841 Lord Melbourne desired to resign but was overruled by the Cabinet, who desired to have a dissolution.<sup>7</sup> "In 1895, after the

<sup>1</sup> *Post*, p. 438.

<sup>2</sup> *Post*, pp. 439-40.

<sup>3</sup> *Post*, pp. 441-3.

<sup>4</sup> *Post*, pp. 440-1.

<sup>5</sup> *Ante*, pp. 299-307.

<sup>6</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 195.

<sup>7</sup> *Life of Lord John Russell*, I, pp. 372 *et seq.*



defeat of Lord Rosebery's Government on the Cordite Vote, the Prime Minister at once submitted to the Cabinet the alternatives of resignation and dissolution. There was much difference of opinion and prolonged debate, but the joint opinion of Lord Rosebery and Sir W. Harcourt in favour of resignation prevailed."<sup>1</sup> In 1905 Mr Balfour desired to dissolve, but his colleagues insisted on resignation. With one exception, there appears to be no suggestion until very recent years that the Prime Minister could advise a dissolution without the consent of his Cabinet. Mr George Wyndham in 1905 wrote to Mr Balfour: "It rests—as I understand the Constitution—with the Prime Minister *alone* to advise a dissolution. The sole responsibility is his and he must jealously preserve that power in its integrity."<sup>2</sup> The obvious retort is that Mr Wyndham did *not* understand the Constitution. He had had no experience whatever in this connection, for he was only an Under-Secretary when the Cabinet decided to dissolve in 1900. The dissolutions in 1906 and 1910 (both) were advised after consultation with the Cabinet.<sup>3</sup>

In 1868 some ministers were very angry because Mr Disraeli asked for a dissolution without calling a Cabinet.<sup>4</sup> The Cabinet had given a general assent ten days before to a policy of dissolution, and Mr Disraeli probably wanted to present them with a *fait accompli* lest they changed their minds. He was in fact successful, for on the following day they endorsed his action, though with reluctance. It has also been said that Mr Gladstone "dissolved in 1874 without consulting his Cabinet".<sup>5</sup> In fact, however, he informed the Queen on January 21st that he would propose to the Cabinet that *they* should advise the Queen to dissolve Parliament.<sup>6</sup> The Queen agreed on the following day<sup>7</sup> and on the 23rd the Cabinet "unanimously concurred".<sup>8</sup>

The decision now rests with the Prime Minister. Thus, on October

<sup>1</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 195.

<sup>2</sup> *Life and Letters of George Wyndham*, II, p. 505.

<sup>3</sup> Oxford and Asquith, *Fifty Years of Parliament*, II, p. 196.

<sup>4</sup> Malmesbury, *Memoirs of an Ex-Minister*, p. 639; *Life of Gathorne-Hardy*, I, pp. 276, 280.

<sup>5</sup> Laski, *The Crisis and the Constitution*, p. 12. Professor Laski informed the author that this statement was made on the authority of Lord Morley. Possibly Lord Morley confused 1868 and 1874.

<sup>6</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 304-5.

<sup>7</sup> *Ibid.* II, p. 306. <sup>8</sup> *Life of Gladstone*, II, p. 486.

16th, 1935, Sir John Simon wrote to the president of the Spen Valley Liberal Association: "The decision whether there shall be an immediate general election and, if so, on what date the country shall go to the polls, rests with the Prime Minister, and until the Prime Minister has decided, all anticipations are without authority."<sup>1</sup> The Prime Minister at about the same time used language which, while not so positive, led to the same conclusion. The dissolution of 1935 was not discussed in Cabinet, and the rule must have been changed by Mr Lloyd George in 1918, or by Mr Baldwin in 1923 or 1929 or by Mr MacDonald in 1924 or 1931.<sup>2</sup>

Sir John Simon's statement also suggests that the King has no choice but to accept the advice. This also is not in accordance with the precedents. Queen Victoria invariably considered whether she should grant or refuse a dissolution. The earlier precedents proceed upon the assumption that an appeal to the country was an appeal by the Sovereign, so that the failure of the Government was regarded as a personal rebuff to the Sovereign. Thus, in 1841, Lord Brougham wrote to the Queen that a dissolution was unjustifiable. "For no one could ever think of such a proceeding as advising the Crown to dissolve Parliament in order to increase the force of the Opposition to its own future ministers, thus perverting to the mere purposes of party the exercise of by far the most eminent of the Royal prerogatives."<sup>3</sup> In 1846 Sir Robert Peel wrote:

I think no minister ought to advise the Sovereign to dissolve Parliament without feeling a moral conviction that dissolution will enable them to carry on the Government of the country—will give them a Parliament with a decided working majority of supporters. The hope of getting a stronger minority is no justification of dissolution. Unsuccessful dissolutions are, generally speaking, injurious to the authority of the Crown. Following rapidly, one after the other, they blunt the edge of a great instrument given to the Crown for its protection. The dissolution of the Whigs in 1841 was, I think, an unjustifiable one. Dissolution now, if the result is likely to be the same, would be equally so.<sup>4</sup>

<sup>1</sup> *The Times*, October 18th, 1935.

<sup>2</sup> Probably the change was due to the hiatus during the war, but there is some suggestion that it was Mr Baldwin in 1923; cf. *Life of Lord Cave*, p. 264.

<sup>3</sup> *Letters of Queen Victoria*, 1st Series, I, p. 369. <sup>4</sup> Peel, *Memoirs*, II, p. 295.

The Queen laid down the same doctrine:

She considers the power of dissolving Parliament a most valuable and powerful instrument in the hands of the Crown, but which ought not to be used except in the extreme cases and with a certainty of success. To use this instrument and be defeated is a thing most lowering to the Crown and hurtful to the country. The Queen strongly feels that she made a mistake in allowing the dissolution in 1841; the result has been a majority returned against her of nearly one hundred votes; but suppose the result to have been nearly an equality of votes between the two contending parties, the Queen would have thrown away her last remedy, and it would have been impossible for her to get any Government which could have carried on public business with a chance of success.<sup>1</sup>

This idea disappeared in the middle of the century, but the recognition of the Queen's complete freedom to reject advice did not. In discussing what should be done if the House of Lords rejected the Bill repealing the Navigation Acts, Lord John Russell said that if the Queen sent for Lord Stanley, "I doubt whether the Queen would give him the power to dissolve."<sup>2</sup> When Lord Stanley was sent for in 1851 he did not ask for a pledge:

I hope I know my duty to my Sovereign too well to insist upon a pledge upon a question with respect to which no Sovereign ought to give a pledge. On the other hand, I am confident that her Majesty knows too well, and respects too highly, the mutual obligations, if I may venture to use the phrase, which subsist between a Constitutional Sovereign and her responsible advisers, to refuse...the ordinary powers entrusted to a minister, or to depart from the ordinary understanding of being guided by his advice.<sup>3</sup>

In 1851 there was discussion between the Queen and Lord John Russell as to her attitude if Lord Stanley accepted office on condition of being allowed to dissolve Parliament. Lord John Russell: "thought the responsibility too great for the Crown to refuse an appeal to the country to the new Government; he thought a decision on that point ought to depend on the peculiar circumstances of the case".<sup>4</sup> When Lord Stanley

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 108.

<sup>2</sup> *Later Correspondence of Lord John Russell*, I, p. 195.

<sup>3</sup> *Parl. Deb.* 3rd Series, vol. 114, col. 1014.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, II, p. 348.

was summoned he broached the question of dissolution, and said that "if it was thought that the Queen would withhold from him the privilege of dissolving, he would not have the slightest chance in the House of Commons". The Queen would not give him a "contingent positive promise", but gave him permission to deny, if necessary, that the Queen would *not* consent to it.<sup>1</sup>

When it became likely that Lord Derby's Government would be defeated in 1858, the Queen sent Sir Charles Phipps to ask Lord Aberdeen's advice as to her action in the event of Lord Derby's asking for a dissolution. Lord Derby had asked permission to announce that, in the event of a defeat, he had her sanction to a dissolution. The Queen refused to give such sanction, or even to pledge herself to a dissolution. The Queen was in fact disinclined to grant a dissolution, and she regarded a threat by Lord Derby to dissolve, with her sanction, as an unconstitutional biasing of the decision of Parliament. Lord Aberdeen thought that Lord Derby might reasonably threaten Parliament that he would advise a dissolution, but that he would have been quite wrong to have joined the Queen's name. As to the grant of a dissolution, he said that he never entertained the slightest doubt that if the Minister advised the Queen to dissolve, she would, as a matter of course, do so. The Minister who advised the dissolution took upon himself the heavy responsibility of doing so, but that the Sovereign was bound to suppose that the person she had appointed as a Minister was a gentleman and an honest man, and that he would not advise her Majesty to take such a step unless he thought it was for the good of the country. There was no doubt of the power and prerogative of the Sovereign to refuse a dissolution—it was one of the very few acts which the Queen of England could do without responsible advice at the moment; but even in this case whoever was sent for to succeed, must, with his appointment, assume the responsibility of this act, and be prepared to defend it in Parliament. He could not remember a single instance in which the undoubted power of the Sovereign had been exercised upon this point, and the advice of the minister to dissolve Parliament had been rejected . . . and that the result of such refusal would be that the Queen would take upon herself the act of dismissing Lord Derby from office, instead of his resigning from being unable longer to carry on the Government.

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, II, p. 366.

The Queen had during her reign, and throughout the numerous changes of Government, maintained an unassailable position of constitutional impartiality, and he had no hesitation in saying that he thought it would be more right, and certainly more safe, for her to follow the usual course, than to take this dangerous time for exercising an unusual and, he believed he might say, an unprecedented course, though the power to exercise the authority was undoubted. He said that he did not conceive that any reasons of expediency as to public business, or the possible effects of frequent general elections, would be sufficient grounds for refusing a dissolution (and reasons would have to be given by the new minister in Parliament), and, as he conceived, the only possible ground which could be maintained as foundation for such an exercise of authority would be the fearful danger to the existence of our power in India, which might arise from the intemperate discussion upon every hustings of the proceedings of the Government with respect to that country.<sup>1</sup>

The Queen accordingly granted permission to dissolve and, apparently, Lord Derby allowed this fact to "become known" before the debate: for the Government was not defeated, and Lord Derby regarded as the primary reason "the growing conviction" that in case of necessity the Queen would sanction a dissolution.<sup>2</sup> Lord Aberdeen's opinion is rather surprising for such an early date. It must obviously be related to the facts of the time. Lord Palmerston's Government had secured an enormous majority in 1857, but had been defeated on the Orsini Bill in 1858. Lord Derby's Government was thus in a substantial minority, and the alternatives were a dissolution and the return of Lord Palmerston. Seeing that Lord Palmerston had already been defeated by that House of Commons and that Mr Disraeli had led the House with some credit, the Queen's tentative decision not to allow Lord Derby to ask the electorate for a majority was rather absurd. A House of Commons which had rejected both a Liberal and a Conservative Government needed to be dissolved.

It may be doubted, however, whether the wider propositions laid down by Lord Aberdeen could be defended. His own experience as Prime Minister was small, though his experience as Cabinet minister had

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, III, pp. 363-5.

<sup>2</sup> *Ibid.* 1st Series, III, p. 369.

been long. He had no experience of the reformed House of Commons, except at a distance; and he was not a statesman accustomed to examine constitutional principles, as Peel had been accustomed. It is not always true that a refusal of dissolution implies resignation. It is not always necessary that an incoming ministry should dissolve. Nor is it necessary that the new minister should give reasons for a refusal in the House of Commons.

It is clear that subsequent Prime Ministers did not consider the Queen's powers to be so limited as Lord Aberdeen suggested. In discussing the question as between dissolution and resignation in 1866, Lord Russell said: "Should they [i.e. the Government] be of opinion that a dissolution is necessary... your Majesty would be entirely free, either to accept that advice, or to adopt the alternative, namely the resignation of your Majesty's ministers."<sup>1</sup> Mr Disraeli stated the same proposition, in more courtly language, in 1868.<sup>2</sup> Lord Salisbury in 1886 was quite clear that Mr Gladstone might be refused leave to dissolve. But he advised the Queen to give leave because "it is the natural and ordinary course; it will shield the Queen from any accusation of partisanship; it is likely to return a Parliament more opposed to Home Rule than the present; and it will adapt itself to the peculiar difficulties, as to the Queen's movements, which arise from the crisis coming at this particular date."<sup>3</sup>

In 1905 King Edward was displeased by Mr Balfour's statement that the House of Commons could insist on a dissolution and that the Cabinet had dictated it.<sup>4</sup> It is said that in November, 1910, the King refused a dissolution until he was given some proof that ministers were powerless in a Parliament of their own choosing.<sup>5</sup> In 1923 Mr Asquith affirmed that the King could refuse a dissolution to Mr MacDonald.<sup>6</sup>

During the last hundred years there is no instance of a refusal of a

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 337; *Life of Lord John Russell*, II, p. 416.

<sup>2</sup> *Life of Disraeli*, II, p. 372.

<sup>3</sup> *Letters of Queen Victoria*, 3rd Series, I, pp. 129-30.

<sup>4</sup> Lee, *King Edward VII*, II, pp. 43-4.

<sup>5</sup> Fitzroy, *Memoirs*, II, pp. 422-3.

<sup>6</sup> *The Times*, Dec. 19th, 1923; and see Marriott, *The Mechanism of the Modern State* (1927), II, pp. 34-5; Evatt, *The King and his Dominion Governors* (1936), ch. VIII.

dissolution by the King when advised by the Cabinet. There has been, nevertheless, a persistent tradition that he could refuse if the necessary circumstances arose. It is difficult to see what those circumstances would be. An appeal to the electorate is an appeal to the supreme constitutional authority. It is true, as Lord Balfour said, that "no constitution can stand a diet of dissolutions"; but dieting would be demanded only because the Constitution failed to carry on its proper function of providing a Government with a stable majority. If the electorate persists in returning a nicely balanced House, it will impel a coalition or compel one party to support another without coalition. But political forces alone can produce such a result. The King can suggest it but not compel it. If the Opposition coalesces, it is not unreasonable for a minority Government to challenge the coalition in the country. If the Government finds additional support, the question does not arise. If the major parties break up, the whole balance of the Constitution alters; and then, possibly, the King's prerogative becomes important.

It is true also that a Government desires a dissolution at a moment most favourable to itself. The Khaki elections of 1900 and 1918 are notorious. The Government in 1935 used a temporary agreement on an international problem to overcome its growing unpopularity. For the King to intervene in such a case would be to favour the Opposition.

Thus, while the King's personal prerogative is maintained in theory, it can hardly be exercised in practice. It is of course not true that the grant of a dissolution to Mr MacDonald in 1924 settled the issue. The King could have taken no other decision. The Labour Government could reasonably demand that it should ask the electors whether its record was not such as to warrant a majority. It could reasonably ask how many of the electors desired to continue to support the Liberal Party, which first put it into office and then turned it out nine months later. The fact that its appeal was unsuccessful and that it appeared to detached observers that it would be unsuccessful is irrelevant. It was a reasonable exercise of the prerogative to ask the electors whether the three-party system was a success and, if the answer was in the negative, whether the Labour or the Conservative Party should have the majority.

§ 4. *Compulsion of the House of Lords by the Creation of Peers.*

Peers are created by the King on the advice of the Prime Minister.<sup>1</sup> But the creation of peers is the only method by which the House of Lords can be compelled to accept a decision of the House of Commons. It is, therefore, subject to special rules derived primarily from the precedents of 1832 and 1911, when the exercise of the prerogative for that purpose was threatened but, because of the success of the threat, not carried out.

The prerogative has actually been used for this purpose on one occasion only, in 1711-12. Queen Anne then agreed to the creation of twelve peers in order to give the Tory Government a sufficient majority to secure the passage of the Treaty of Utrecht.<sup>2</sup> A precedent so old is no precedent. For the support of the House of Lords was then as necessary—if not more necessary—to a Government as the support of the House of Commons. An amendment to the Address, objecting to a peace which allotted Spain and the West Indies to the House of Bourbon, had been passed in the House of Lords, and the Government proceeded to obtain a majority in that House.

The support of the House of Lords is no longer necessary to any Government. But since, for the century before 1911, the House of Lords usually contained a Tory or Conservative majority, and since the support of that House was necessary to legislation, the absurd result followed that without the special creation of peers a Whig or Liberal Government and a Whig or Liberal House of Commons could be overruled by a Conservative Upper House. As Lord Grey said in 1832,

I ask what would be the consequences if we were to suppose that such a prerogative did not exist, or could not be constitutionally exercised. The Commons have a control over the power of the Crown by the privilege in extreme cases of refusing supplies; and the Crown has, by reason of its power to dissolve the House of Commons, a control upon any violent or rash proceedings on the part of the Commons; but if a majority of this House [of Lords] is to have the power whenever they please of opposing the declared and decided wishes of the Crown

<sup>1</sup> See Chapter XIII, *post*, pp. 351-2.

<sup>2</sup> See a short account, from a Conservative point of view, in Esher, *Influence of King Edward*, pp. 68-72.



and the people, without any means of modifying that power, then this country is placed entirely under the influence of an uncontrollable oligarchy.<sup>1</sup>

By 1911 some of these expressions needed modification, but the fundamental contention was sound. In modern language, the existence of an uncontrolled legislative power in the House of Lords was inconsistent with the principles of democracy upon which the Constitution was built.

It is true that, by 1911, the House of Lords had adopted the principle that its power was to be exercised only so as to secure that the House of Commons was supported by the electorate. On this principle it rejected the Budget of 1909 and passed it after the first general election of 1910. But the history of its action from 1892 to 1895, and from 1906 to 1910, and its inaction when a Conservative Government was in power, can be brought into the principle only if it is assumed that everything which a Conservative Government proposed had the approval of the electorate and that very little which a Liberal Government proposed had that approval. The practical working of that principle, in other words, assumed that the electorate was always Conservative except at some general elections.

The precedent of 1911 was based upon that of 1832, though the action of the Liberal Government was in some respects more careful of the privileges of the House of Lords than that of the Whig Government. The Whig Government took office after a general election late in 1830. It is true, as Mr Asquith said,<sup>2</sup> that there was no Reform Bill before the country in 1830. But there had been a long period of agitation, there had been Bills suggesting modest reforms in the House of Commons, and Reform was the main issue of the election—in so far as any election before 1832 could be said to have an issue.<sup>3</sup> The Bill was introduced in March, 1831; on March 22nd it was given a second reading by a majority of one; on April 19th the Government was defeated in Committee; and Parliament was dissolved on April 22nd by the King in

<sup>1</sup> Quoted Esher, *Influence of King Edward*, pp. 82-3.

<sup>2</sup> *Life of Lord Oxford and Asquith*, I, p. 319.

<sup>3</sup> Butler, *The Passing of the Great Reform Bill*, chs. I-III, especially pp. 83 and 97.

person, in order to forestall an address from the House of Lords not to dissolve Parliament.

The Government secured an enormous majority, and the Bill passed the House of Commons at the end of September. On October 8th the House of Lords rejected the Bill on second reading by a majority of forty-one. The Cabinet decided to remain in office on condition of having the King's support for a new Bill of equal efficacy. The third Bill was introduced and read a second time on December 12th. On January 2nd, 1832, the Cabinet agreed to recommend an immediate creation of some peers, as evidence of the Government's intention to secure the passage of the Bill. The King did not immediately consent, but asked for the Cabinet's advice in writing. In the meantime, Lord Wharncliffe, who led the section of peers (called "the Waverers") which was seeking a compromise, saw the King, and several other peers exercised their right of audience. On January 13th the Cabinet drafted a long formal minute of advice, setting out the Cabinet's view of the political situation, and emphasising that the power to create peers was the means available for preventing the House of Lords from "continuing to place itself in opposition to the general wishes of the nation, and to the declared sense of the House of Commons". This remedy could, however, only be used "for the purpose of producing a change of conduct in the House of Lords, when the opinion of the people, strongly and generally expressed and identified with that of their representatives, leaves no other hope of terminating the existing division". They accordingly advised that, as soon as it was evident that the Government was not able to secure the passage of the Bill, enough peers should be created to secure the success of the Bill.<sup>1</sup>

The King gave his consent, subject to the "irrevocable condition" that the creations of new peers should not exceed three, the rest being heirs and Scottish and Irish peers.<sup>2</sup> The Bill was sent up to the House of Lords on March 26th. On the next day the Cabinet decided to recom-

<sup>1</sup> Grey, *Correspondence with King William IV and Sir Herbert Taylor*, II, pp. 96-102.

<sup>2</sup> *Ibid.* II, p. 113.

mend an immediate prorogation, followed by a creation of peers, if the Lords rejected the Bill. The King's reply showed that there were still reservations to his pledge to create peers. On April 14th the Bill passed its second reading by a majority of nine. But on going into Committee on May 7th the House agreed, by a majority of thirty-five, to postpone consideration of the disfranchising clauses.

The Cabinet met next day and drafted a minute advising the creation of such a number of peers "as might ensure the success of the Bill in all its essential principles, and as might give to your Majesty's servants the strength which is necessary for conducting with effect the business of the country".<sup>1</sup> On May 9th the King wrote that he "cannot reconcile it to what he considers to be his duty, and to be the principles which should govern him in the exercise of his prerogative which the Constitution of this country has entrusted to him, to consent to so large an addition to the peerage as that which has been mentioned to him by Lord Grey and the Chancellor to be necessary"<sup>2</sup> and requesting the members of the Cabinet to remain in office until he had made other arrangements.<sup>3</sup>

The resignation of ministers was announced to Parliament, and the House of Commons proceeded to pass with a majority of eighty an address to the King praying him to "call to his Council such persons only as will carry into effect, unimpaired in all its essential provisions, that Bill for Reforming the Representation of the People which has recently passed this House". The King nevertheless sent for Lord Lyndhurst and asked him to consider whether an administration could be formed on the basis of moderate but extensive reform. The Duke of Wellington agreed to support the proposal, but Sir Robert Peel refused. The King then sent for the Duke, who was commissioned to form a Government, though not necessarily as Prime Minister. But Peel's

<sup>1</sup> Grey, *Correspondence with King William IV and Sir Herbert Taylor*, II, p. 394; *Taylor Papers*, p. 342.

<sup>2</sup> The minute was presented by Lords Grey and Brougham, who had mentioned the figure of fifty.

<sup>3</sup> Grey, *Correspondence with King William IV and Sir Henry Taylor*, II, p. 396; *Taylor Papers*, p. 343.

opposition, and above all the attitude of the House of Commons, made the task impossible, and on May 15th the Duke resigned his commission.

The King at once proposed to Grey that the Bill should be passed by agreement, without the creation of peers. The old Cabinet met the same day and replied that "they could not continue in their present situations... except with a sufficient security that they will possess the power of passing the present Bill, unimpaired in its principles, and its essential provisions, and as nearly as possible in its present form".<sup>1</sup> The King, however, drew attention to a statement by Mr Baring, the temporary Tory leader of the House of Commons, suggesting that an assurance might be given that the Bill would be allowed to pass. A Cabinet minute was drawn up in answer on May 16th, stating that the two possibilities were a cessation of opposition, and a creation of peers. They did not believe that the former was practicable, but as they wished to avoid the latter, they asked permission to hold over an answer until the 18th. On the morning of May 17th the King sent, through Sir Henry Taylor, a letter to the Duke and some of his followers, pointing out that a declaration in the House of Lords, by a sufficient number of peers, that they had resolved to drop opposition to the Bill, would remove all difficulties.<sup>2</sup> A copy was sent to Lord Grey. No such declarations were made, but the Duke and others informed the King that they would take no further part in the discussion of the Bill. The Cabinet, in a minute of May 18th, nevertheless asked for "full and indisputable security" to carry the Bill.<sup>3</sup> The King at length gave his consent verbally. In a letter written the same evening he stated his willingness to give the necessary security.

"With this view his Majesty authorises Lord Grey, if any obstacle should arise during the further progress of the Bill, to submit to him a creation of peers to such an extent as shall be necessary to enable him to carry the Bill, always bearing in mind that it has been, and still is, his Majesty's object to avoid any permanent increase in the peerage, and,

<sup>1</sup> Grey, *Correspondence with King William IV and Sir Henry Taylor*, II, p. 411; *Taylor Papers*, pp. 347-8.

<sup>2</sup> Grey, *op. cit.* II, p. 420; *Taylor Papers*, pp. 351-2.

<sup>3</sup> Grey, *op. cit.* II, p. 432.

therefore, that this addition to the House of Peers, if, unfortunately, it should become necessary, shall comprehend as large a proportion of the eldest sons of Peers and collateral heirs of childless Peers as can possibly be brought forward. In short, that the list of eldest sons and collaterals who can be brought forward shall be completely exhausted before any list be resorted to which can entail a permanent addition to the peerage.<sup>1</sup>

It was then announced in both Houses that, as the Government had the means to carry through the Bill unimpaired with efficiency, its members remained in office.

Sir Henry Taylor allowed it to be known that the King had consented to an unlimited creation of peers. Possibly as a result, the Bill passed through Committee, was read a third time on June 4th, and received the Royal assent on June 7th. It is pointed out by Lord Esher<sup>2</sup> that the King was "well aware", when he gave his final promise, that no further obstacle would arise. The conclusion which Lord Esher desired to be drawn was, presumably, that the events of 1832 formed no precedent.<sup>3</sup> But, in truth, it is immaterial whether the King did or did not expect that his permission would need to be used. By giving his consent, he recognised that, if there proved to be no other way of securing the passage of the Bill, peers would be created. Nor, indeed, was this last letter the first recognition. It was the last of a series; and the earlier sanctions differed from the last only in that the final permission was for an unspecified and therefore unlimited number. What is more, it is by no means certain that the famous letters of May 17th, in which the King asked the Duke and others to declare that they would allow the Bill to pass, were effective. They certainly obtained from the Duke a private promise to abstain from the further proceedings on the Bill. But it is by no means so certain that a sufficient number of peers would have followed his lead. What really secured the passage of the third Bill was the knowledge that the alternative was the creation of a substantial number of peers. Lord Brougham confessed to doubts, twelve years later, as to

<sup>1</sup> Grey, *Correspondence with King William IV and Sir Henry Taylor*, II, p. 434.

<sup>2</sup> *Influence of King Edward*, p. 78.

<sup>3</sup> The article in question appeared as letters in *The Times* between December, 1909, and April, 1910. As to its purpose, cf. *ibid.* p. 67.

whether he would have assented to a creation of peers if the Lords had not given way.<sup>1</sup> Brougham's confessions are not to be taken too seriously. Nor is much attention to be paid to his recollection of his state of mind twelve years before. In any case, what matters is not what the Government would have done, but what it obtained authority to do.

Bagehot said that the Reform Act of 1867 completed the work of the Act of 1832 by giving the House of Commons preponderance over the House of Lords. Thus it was necessary "to frame such tacit rules to establish such ruling but unenacted customs, as will make the House of Lords yield to the Commons when and as often as our new Constitution requires that it should yield". This is "whenever the opinion of the Commons is also the opinion of the nation, and when it is clear that the nation has made up its mind". He did not suggest that the House of Lords, like a dog, was always entitled to two bites, for the fact that a Bill has been produced once or several times is an important factor, but not the only factor. "The House of Lords ought, on a first-class subject, to be slow—very slow—in rejecting a Bill passed even once by a large majority of the House of Commons."<sup>2</sup>

Such a doctrine would have compelled the House of Lords to have accepted the second Home Rule Bill (unless it could be asserted that the Irish people were not part of "the nation"). Mr Gladstone denied the whole doctrine of the two bites. "At no period of our history... has the House of Commons been dissolved at the call of the House of Lords, given through an adverse vote;... the establishment of such a principle would place the House of Commons in a position of inferiority, as a legislative chamber, to the House of Lords."<sup>3</sup> Nevertheless, the House of Lords insisted on biting the Finance Bill of 1909 once before it swallowed it. In the view of the Liberal Government of the day, it became necessary to abolish the power of the House of Lords to compel a dissolution.<sup>4</sup>

<sup>1</sup> Brougham, *Political Philosophy* (2nd edition), III, p. 308.

<sup>2</sup> Bagehot, *Parliamentary Reform*, pp. 201-3.

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, III, p. 518.

<sup>4</sup> See Mr Asquith's subsequent comment, *Life of Lord Oxford and Asquith*, II, p. 33.

The King's chief adviser at this time was Lord Esher, a former Conservative politician who had made himself useful about the court, especially as a constitutional adviser. He was in communication with Lord Haldane, who was, apparently, fishing for information as to the King's attitude. He asserts that, before the first election of 1910, the Cabinet was discussing whether, instead of attempting to alter by statute the relations between the two Houses, they should advise the King to place permanently in the hands of the Prime Minister of the day the prerogative of creating peers. The alternative was a Bill introduced with the statement that the King had promised to create a sufficient number of peers to pass the measure. This information was passed on to the King's private secretary with the comment that either proposal was an "outrage". Queen Anne's precedent was only for the creation of twelve peers. The case of 1832 was no precedent "as no peers were created, and it is by no means certain that the King would in the last resort have made them".<sup>1</sup> This last statement is obviously based on Lord Brougham's subsequent comment. Apart from what was said above, it leads to the assumption that the precedent created in 1832 was that the King might promise to create peers and subsequently refuse to carry out his promise. Lord Esher further suggested that the grave aspect of Lord Haldane's information was the desire of the Government to secure a promise before the general election (the first of 1910). This Lord Esher regarded as a "monstrous proposal", and he suggested that, if made, it should be met with a firm refusal.<sup>2</sup>

Lord Esher discussed the matter with Mr Balfour, though there is no evidence that it was done at the King's suggestion. Mr Balfour agreed that the King ought not under any circumstances to make a promise before the introduction of a Bill to deal with the House of Lords. He considered that if the suggestion were made a reasoned answer should be given pointing out that:

(a) there was no crisis necessitating urgency, because Lord Lansdowne pledged the House of Lords to pass the Budget if the Liberals were returned to power;

<sup>1</sup> *Esher Papers*, II, pp. 423-4.

<sup>2</sup> *Ibid.* II, pp. 424-5.

(b) it would be a breach of the King's duty, if not of his Coronation oath, to pledge himself to create peers to pass a Bill which he had never seen;

(c) there was no precedent for asking the Sovereign to use his prerogative to pass through the House of Lords a measure which had not even obtained the assent of the House of Commons;

(d) though there might be some justification for asking him to use his prerogative to pass a Bill which already received the assent of an overwhelming majority of the House of Commons, there was none for asking him to promise to use it for the purpose of passing ultimately through the House of Lords a Bill which the House of Commons had not even seen;

(e) as regards the principle of the use of the prerogative, he must refuse to discuss it, as the principle was entirely dependent upon the circumstances.<sup>1</sup>

Mr Balfour added that Mr Asquith might resign in consequence, and the King would probably send for Mr Balfour and authorise him to state in Parliament the dilemma in which the ministers had placed the King. He felt confident that the King would be supported by the country.<sup>2</sup> Mr Balfour put his views into a memorandum.<sup>3</sup> When the election results were known, Lord Esher wrote a memorandum for the King and communicated Mr Balfour's views.<sup>4</sup> It is not clear whether Mr Balfour's memorandum was shown to the King, though it seems unlikely that Mr Balfour would write such a document merely for Lord Esher's edification.

In the meantime, Lord Knollys had already informed Mr Asquith during the dissolution, without his asking, that the King "had come to the conclusion that he would not be justified in creating new peers (say 300) until after a second general election". Further, the King regards the policy of the Government as tantamount to the destruction of the House of Lords, and he thinks that before a large creation of peers is embarked upon or threatened the country should be acquainted with the particular project for accomplishing such destruction as well as with the general line of action as to which the country will be consulted at the forthcoming election.<sup>5</sup>

<sup>1</sup> *Esher Papers*, II, pp. 435-6.

<sup>2</sup> *Ibid.* II, p. 436.

<sup>3</sup> *Ibid.* II, p. 437.

<sup>4</sup> *Ibid.* II, pp. 441, 442.

<sup>5</sup> *Life of Lord Oxford and Asquith*, I, p. 261.



Language which Mr Asquith used in an election speech caused some to believe that the necessary "guarantees" for the passing of a Bill to limit the powers of the House of Lords had been obtained. The King therefore asked to know the intention of the Government. The Cabinet drafted a formal minute:

His Majesty's Ministers do not propose to advise or request any exercise of the Royal prerogative in existing circumstances, or until they have submitted their plan to Parliament. If in their judgment, it should become their duty to tender such advice, they would do so when—and not before—the actual necessity may arise.<sup>1</sup>

This was on February 11th, 1910, after the Government had secured a substantial, though reduced, majority at the first general election of that year.

On February 21st, as soon as possible after the meeting of Parliament, Mr Asquith made the position clear in the House of Commons.

I tell the House quite frankly that I have received no such guarantee, and that I have asked for no such guarantee. In my judgment it is the duty of statesmen and of responsible politicians in this country as long as possible and as far as possible to keep the name of the Sovereign and the prerogatives of the Crown outside the domain of party politics. If the occasion should arise, I should not hesitate to tender such advice to the Crown as in the circumstances the exigencies of the situation appear to warrant in the public interests. But to ask in advance for a blank authority for an indefinite exercise of the Royal prerogative in regard to a measure which has never been submitted to or approved by the House of Commons is a request which, in my judgment, no constitutional statesman can properly make, and it is a concession which the Sovereign cannot be expected to grant.<sup>2</sup>

Resolutions designed to form the basis of the Parliament Bill were introduced on March 29th and disposed of by April 14th, when the Parliament Bill was read a first time. On the latter date Mr Asquith explained the next step:

✓ If the Lords fail to accept our policy, or decline to consider it as it is formally presented to the House, we shall feel it our duty immediately to tender advice to the Crown as to the steps which will have to be

<sup>1</sup> *Life of Lord Oxford and Asquith*, I, p. 273.

<sup>2</sup> 14 H.C. Deb. 5 s., 55-6.

taken if that policy is to receive statutory effect in this Parliament. What the precise terms of that advice will be... it will, of course, not be right for me to say now; but if we do not find ourselves in a position to ensure that statutory effect shall be given to that policy in this Parliament, we shall then either resign our offices or recommend the dissolution of Parliament. Let me add this, that in no case will we recommend a dissolution except under such conditions as will secure that in the new Parliament the judgment of the people as expressed at the elections will be carried into law.<sup>1</sup>

On April 27th a meeting was held at Lambeth Palace which was clearly suggested by the King, since it was summoned by the Archbishop of Canterbury at the request of Lord Knollys. Besides the Archbishop and Lord Knollys there were present only Lord Esher and Mr Balfour. Thus, the purpose of the meeting was obviously to enable the King to find out Mr Balfour's views on the creation of peers. The Archbishop expressed the view that if the King was asked to create 500 peers to pass the Parliament Bill through the then Parliament his course seemed clear, but that it was not so clear what he should do if he were asked to grant a dissolution coupled with a promise to create peers in the event of a Liberal majority being returned after the election.<sup>2</sup>

Mr Balfour carefully refrained from expressing a positive opinion, but the bent of his mind was clearly in favour of the King's refusing a promise. He said that the refusal, if decided upon, should be in a carefully worded document. "It would require care, but... a satisfactory document could be framed, and, if successfully framed, would add lustre to the position of the Sovereign."<sup>3</sup> He pointed out that if the Government's proposal were refused the Government would resign, he, Mr Balfour, would then form a Government, and immediately ask the King to grant him a dissolution. There was some discussion on a possible compromise, and the precedent of 1884<sup>4</sup> was referred to. Mr Balfour said that he could see no objection to the King's proposing a compromise, but did not commit himself as to whether a compromise was possible.<sup>5</sup>

<sup>1</sup> 16 H.C.Deb. 5 s., 1548.

<sup>3</sup> *Ibid.* II, p. 457.

<sup>5</sup> *Esher Papers*, II, pp. 458-9.

<sup>2</sup> *Esher Papers*, II, pp. 456-7.

<sup>4</sup> *Ante*, pp. 285-6.

What the King would have done is an open question, though Lord Oxford's biographers express the view that King Edward would have done what his successor did.<sup>1</sup> King Edward died on May 7th. His death changed the situation, and with the consent of the new King Mr Asquith discussed with Mr Balfour the holding of a Conference to make some attempt to settle the problem by agreement. It met on June 17th, the Government being represented by Mr Asquith, Mr Lloyd George, Lord Crewe and Mr Birrell, and the Opposition by Mr Balfour, Lord Lansdowne, Mr Austen Chamberlain and Lord Cawdor. It failed, however, to reach agreement,<sup>2</sup> and the position was thus restored to that existing at the death of King Edward.

The last meeting of the Conference was held on November 10th. On the same day the Cabinet decided to ask the King for an immediate dissolution. On the following day Mr Asquith informed the King that it was necessary that, in the event of the Government obtaining an adequate majority in the new Parliament, the matter should be put in train for final settlement. In theory the Crown might withhold writs of summons to peers.

But this has not been done for many centuries; it would be most invidious in practice; and it is at least doubtful whether it can be said to be constitutional. On the other hand the prerogative of creation [of Peers] is undoubted; it has never been recognised as having any constitutional limit; it was used for this very purpose in the 18th century, and agreed to be used on a large scale by King William IV in 1832. There could be, in Mr Asquith's opinion, no doubt that the knowledge that the Crown was ready to use the prerogative would be sufficient to bring about an agreement without any necessity for its actual exercise.<sup>3</sup>

Mr Asquith did not ask for an immediate reply. On November 15th the Cabinet gave the following advice in a formal minute:

An immediate dissolution of Parliament—as soon as the necessary parts of the Budget, the provision of old age pensions, and one or two

<sup>1</sup> *Life of Lord Oxford and Asquith*, I, pp. 279–80. This opinion is based upon the King's statement quoted *ante*, p. 327; but presumably the authors of the book were unaware of the Archbishop's informal conference.

<sup>2</sup> For the Constitutional Conference, see *Life of Lord Oxford and Asquith*, I, pp. 285–91; *Life of Lord Lansdowne*, pp. 396–403.

<sup>3</sup> *Life of Lord Oxford and Asquith*, I, p. 296.

other matters have been disposed of. The House of Lords, if they demand it, at the same time, but not so as to postpone the date of the dissolution, to discuss the Government Resolution. H.M. Ministers cannot, however, take the responsibility of advising a dissolution unless they may understand that in the event of the policy of the Government being approved by an adequate majority in the new House of Commons, H.M. will be ready to exercise his constitutional powers (which may involve the prerogative of creating peers) if needed, to secure that effect shall be given to the decision of the country.

H.M. Ministers are fully alive to the importance of keeping the name of the King out of the sphere of party and electoral controversy. They take upon themselves, as is their duty, the entire and exclusive responsibility for the policy which they will place before the electorate. H.M. will doubtless agree that it would be inadvisable in the interest of the State that any communication of the intentions of the Crown should be made public unless and until the actual occasion should arise.<sup>1</sup>

Mr Asquith and Lord Crewe (as leader of the House of Lords) saw the King on the following day. The King, after much discussion, "felt that he had no alternative but to assent to the advice of the Cabinet", but he insisted that the Parliament Bill should be submitted to the House of Lords before the election.<sup>2</sup> To this Mr Asquith agreed, and the Bill was read a first time and discussed on second reading in the House of Lords before the dissolution. The elections then proceeded on the issue raised by the Bill, and the Government's position was substantially unchanged. At no time was any public announcement or private communication made that the King had consented to a creation of peers, if necessary.

On December 12th Lord Morley (who, of course, knew that the King had already consented) told Sir Almeric Fitzroy that he thought the position of the King was particularly difficult,

as, if the demand should be made for him to create 500 peers, he thought he would have very good reason for refusing, doubtful as the consequences might be.... He believed that Arthur Balfour would take office if, owing to the King's refusal, the Government would resign. Of course, another dissolution would follow, when he thought it likely

<sup>1</sup> *Life of Lord Oxford and Asquith*, I, pp. 296-7.

<sup>2</sup> *Ibid.* I, p. 298; *Life of Lord Lansdowne*, p. 410.

that the country, in despair of any other expedient, would give the Unionists a majority.<sup>1</sup>

Mr Balfour (who did not know of the King's promise) was of a different opinion. Writing to Lord Lansdowne on December 27th, he thought that no alternative to consent to create peers was possible. To change a Ministry without a dissolution was a confession of impotence, and in the absence of almost unthinkable provocation, a dissolution in February following on a dissolution in the preceding December, which itself followed on a dissolution in the preceding January, would be so unpopular that the Ministry which advised it could hardly expect to gain by it. The King would have to work with the present Government, and within rather wide limits they could compel him to take any course they pleased by threatening resignation.<sup>2</sup>

On January 27th the King saw Lord Lansdowne, and Lord Knollys had previously seen Mr Balfour. Mr Asquith had, apparently, at first objected, but the King said that he wanted not advice but the views of the Opposition. Mr Asquith had then reluctantly withdrawn his objection.<sup>3</sup> The King did not explain that he had already consented to a creation of peers, if necessary, but mentioned the possibility of his being asked. Lord Lansdowne said that he could conceive that the step might become inevitable, but it was one which had been universally condemned, as violently straining the Constitution. It was a step which, he felt sure, the King would be reluctant to take and ministers to advise; and he thought it not unfair to say that, up to a certain point, they would be justified in bearing this fact in mind when considering whether it was advisable to offer resistance to the Government proposals. The King then discussed the improbability of Mr Balfour's being able to form a Government and to go to the country, supposing that the King were to send for him. Lord Lansdowne agreed with the King and said that he did not see that Mr Balfour would stand a chance at an immediate election on the same issue. But as the situation developed, it might undergo a change.<sup>4</sup> He warned the King not to take it for granted "that in no circumstances might the House of Lords take a line which would

<sup>1</sup> Fitzroy, *Memoirs*, II, p. 427.

<sup>3</sup> *Ibid.* p. 409.

<sup>2</sup> *Life of Lord Lansdowne*, p. 407.

<sup>4</sup> *Ibid.* p. 410.

render it impossible for him to overcome them except by the creation of peers".<sup>1</sup>

The Parliament Bill went up to the House of Lords on May 23rd. It was read a second time without a division. It was in Committee from June 28th to July 14th, where it was completely transformed. As soon as this stage was over, a Cabinet minute was drawn up, drawing the King's attention to the fact that the House of Commons could not be advised to accept the Bill as it now stood, that a deadlock between the two Houses would be created, and that a third dissolution was wholly out of the question. "Hence, in the contingency contemplated, it will be the duty of ministers to advise the Crown to exercise its prerogative so as to get rid of the deadlock and secure the passing of the Bill. In such circumstances ministers cannot entertain any doubt that the Sovereign would feel it to be his constitutional duty to accept their advice."<sup>2</sup> Three days later the King intimated that he would accept the advice.<sup>3</sup>

On July 18th Mr Lloyd George met Mr Balfour and Lord Lansdowne, and stated that a pledge to create peers had been obtained from the King in November. He also suggested that a formal notification should be made privately to the Opposition leaders. On the next day, as a result of communications between Mr Balfour and Lord Knollys, Lord Lansdowne asked Lord Knollys to call upon him. He suggested that the King's formal communication should be in writing, though it did not matter whether it was written by Lord Knollys or by the Prime Minister on the King's authority. Lord Knollys said that the King hoped that an intimation that peers would be created as a last resort would suffice for the purpose of passing the Bill without material amendments. It was ultimately agreed that Mr Asquith should communicate in writing the King's intention.<sup>4</sup> Mr Asquith insisted that the intimation should come from him, and as soon as the Bill was read a third time on July 20th, he sent formal notes to Mr Balfour and Lord Lansdowne stating that, should the necessity arise, the Government

<sup>1</sup> *Life of Lord Lansdowne*, p. 411.

<sup>2</sup> *Life of Lord Oxford and Asquith*, I, p. 310.

<sup>4</sup> *Life of Lord Lansdowne*, pp. 417-19.

<sup>3</sup> *Ibid.*

would advise the King to exercise his prerogative to secure the enactment of the Bill in substantially the same form in which it left the House of Commons, and that the King had signified that he would accept and act upon that advice.<sup>1</sup>

On July 21st this information was communicated by Lord Lansdowne to a meeting of Unionist peers. A summary of its proceedings was, apparently, sent to the King by Lord Lansdowne. Lord Lansdowne and others agreed that the Bill ought to be allowed to pass, though there was a substantial section which disagreed. On July 24th the King saw Lord Lansdowne, but, though he mentioned that he and his advisers were anxious to avoid a large creation of peers, he did not, apparently, attempt to influence the action of the Unionist peers.<sup>2</sup>

On July 24th the Lords' amendments were considered by the House of Commons. Mr Asquith intended to announce publicly the Government's advice and its acceptance, but was shouted down.<sup>3</sup> He proposed to say that the precedent of 1832 was "what the lawyers call a case precisely in point" and to give in some detail a history of that precedent.<sup>4</sup> On August 7th and 8th votes of censure were moved in the House of Commons and the House of Lords respectively on the double ground that the advice was a gross violation of constitutional liberty and that the people would be precluded from again pronouncing on the policy of Home Rule. In order to keep the King's action out of controversy as much as possible, Lord Crewe, with the King's leave, explained what had taken place at the interview of November 16th, 1910.

On August 8th the House of Commons rejected the Lords' amendments, with one exception, and made a concession on another. On August 9th the Bill, as amended, was returned to the Lords. Lord Morley, with the King's sanction, informed the House that "if the Bill should be defeated to-night his Majesty will assent to the creation of peers sufficient in numbers to guard against any possible combination of the different parties in opposition by which the Parliament Bill might

<sup>1</sup> *Life of Lord Oxford and Asquith*, I, pp. 212-13.

<sup>2</sup> *Life of Lord Lansdowne*, pp. 421-5.

<sup>3</sup> *Life of Lord Oxford and Asquith*, I, p. 314.

<sup>4</sup> See the text of the undelivered speech, *ibid.* I, pp. 315-20.

be exposed a second time to defeat".<sup>1</sup> The Government secured a majority of seventeen and the creation of peers then became unnecessary.

The precedent of 1911 differs from that of 1832 in several respects:

(1) In 1831 the Government was defeated in the House of Commons and appealed to the country for that reason. In 1910 the Government was not defeated on the Parliament Bill in that House and was not defeated in the House of Lords until after the second election. The Bill was the consequence of the rejection of the Finance Bill, 1909. The first general election was primarily an appeal to the country on the latter Bill. A second general election became necessary to give the Government a "mandate" for the Parliament Bill. Thus, in 1910 as in 1831 the Government had the approval of the electorate before the House of Lords was asked for a decision.

(2) In 1831 the (second) Reform Bill was defeated in the House of Lords. A third Bill was introduced in the House of Commons and the King's assent to the creation of peers was obtained before this Bill went to the Lords. In 1910-11 there were two Bills only, and the King's assent to the creation of peers, if necessary, was obtained before either the House of Lords or the electors had been specifically consulted on the principle of the Bill.<sup>2</sup>

(3) In 1831 the King's assent was conditional, the Government was defeated in the House of Lords on the third Bill, and when the advice was given to create peers the King refused. The Government then resigned and an attempt was made by the Opposition to form a Government. This failing, the Government resumed office, and then secured sanction for the creation of peers if necessary. In 1910 the King's assent was conditioned only by the return of the Liberal Government after the second general election, and by the necessity of the creation to pass the Bill. Consequently, when the Government was defeated in the House of Lords, the King's formal assent was given and the Government did not resign.

(4) In 1831-2 the King did not communicate with the Opposition until the resignation of the Government. In 1910 the King saw the leaders of the Opposition in order to obtain information as to their views.

<sup>1</sup> Morley, *Recollections*, II, p. 353.

<sup>2</sup> Lord Lansdowne considered that it was constitutional to ask for a creation of peers after the second election but not before: *Life of Randall Davidson*, I, p. 627.



(5) In 1832 the King actively intervened in an attempt to secure the acceptance of the Bill by the Opposition in the House of Lords. In 1910 an attempt was made by a constitutional conference to obtain a compromise. But the King himself did not intervene.

(6) In 1832 the King's final decision was made known by ministers in Parliament. In 1911 the King's decision was first communicated by ministers to the leaders of the Opposition.

(7) In neither case was the creation of peers necessary, since a sufficient number of peers abstained from voting.

The application of these precedents to any future dispute between the two Houses is complicated by the means now available for overcoming the opposition of the House of Lords under the Parliament Act itself. A Money Bill so certified by the Speaker may become an Act of Parliament without the consent of the House of Lords if it is sent up at least one month before the end of the session and is not passed by the House of Lords within one month of its being sent up. A Public Bill (other than a Money Bill or a Bill extending the maximum duration of Parliament) may become an Act of Parliament without the consent of the House of Lords if it is passed in three successive sessions (whether of the same Parliament or not), and, having been sent up at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, provided that two years have elapsed between the date of the second reading in the House of Commons in the first session and the date of its passing the House of Commons in the third session; and a Bill is to be deemed to be rejected if it is not passed either without amendment or with such amendments only as may be agreed to by both Houses.

It is clear that, in relation to Bills which come within the definition of "Money Bill", no question of creating peers to overcome the opposition of the House of Lords can arise. The opposition will be ineffectual after the expiry of a month. "Public Bills" are not, however, defined by the Act, except that it is provided that a Bill confirming a Provisional Order is not a Public Bill. Nor is there any other legal definition of Public Bill. Each House determines by its standing orders what Bills are to be termed private or hybrid. The Act speaks of a Public Bill which is "passed by the House of Commons". It seems, therefore, that a Bill is

Public if it is passed by the House of Commons as a Public Bill. Since the House can always suspend standing orders so as to pass as a Public Bill which would otherwise be dealt with as a Private Bill or as a Hybrid Bill, it follows that the only Bills which cannot be passed under the Parliament Act are (1) Bills to extend the maximum duration of Parliament, and (2) Bills to confirm Provisional Orders. A Bill to amend the Parliament Act can be passed under the Parliament Act itself.

With the two exceptions noticed, the House of Commons can secure the passing of any legislation it pleases within the space of little more than two years. It is unlikely that any question of creating peers would be raised in connection with the exceptions. It is therefore a question whether the power of creating peers could ever be used to overcome the opposition of the House of Lords.

It is undoubted that the prerogative remains. The only question is whether the King would be bound to assent to its use. It is clear that the power to refuse is extant. It was never suggested, either in 1832 or in 1910, that the King was bound to accept the advice of his ministers. In 1832, indeed, William IV accepted his ministers' resignations rather than consent to the creation of 50 peers. But that example also showed that he can in fact refuse only if an alternative Government is possible. He would be bound either to dissolve Parliament at the request of the Government with a majority, or to accept its resignation and to grant a dissolution to the new minority Government. It is true that a minority Government could remain in office for a time without a dissolution. It is commonly said that the House of Commons could "refuse supplies". But once the Appropriation Act has been passed the Government can remain in office until the Army and Air Force (Annual) Act has to be passed, assuming that it need not produce supplementary estimates or that it can meet additional expenditure out of the Civil Contingencies Fund or out of money borrowed under the Appropriation Act. This provides, however, a maximum period of only eight months. Moreover, if the Finance Act has not been passed, the levying of income tax and duties of customs and excise provided by annual votes become illegal under the Provisional Collection of Taxes Act, 1913.

A dissolution is thus inevitable. If the majority Government is compelled to resign, it is inevitable that the King's action should be the subject of controversy at the general election. If, however, a contingent promise to create peers is given, the King's action can be kept secret and thus preserved from controversy until the election is over, as in 1910. If the King refuses a promise and the former Government obtains a majority, he will be compelled to give a belated consent, as in 1832, and will have suffered the constitutional inconvenience of being personally attacked in every constituency in the United Kingdom. Thus, the Parliament Act has altered the situation only in that (1) the question cannot arise in respect of a Money Bill, (2) the question is not likely to arise in respect of any other Bill unless the Government regards it as sufficiently urgent and fundamental to risk a general election, and (3) the House of Lords, knowing that its opposition can be overborne, is less likely to proceed to extreme opposition. The last point is particularly important, since many amendments can be forced upon the Government because of its reluctance to run the risk of a general election.

§ 5. *The Personal Prerogatives and Ministerial Responsibility.*

It has frequently been asserted that for every act of the monarch some minister is responsible.<sup>1</sup> Undoubtedly the ordinary legal acts of the King, referred to in the last chapter, are in fact the acts of ministers, who are responsible for them to Parliament. It is a little difficult, however, to see what "responsibility" means in relation to the personal prerogatives. The question arose over the dismissal of the Whigs in 1807. There were then discussions in both Houses as to whether the King's act was one for which he was personally responsible or whether the Tories, by taking office, became responsible.<sup>2</sup> In 1835 Peel admitted that by taking office he became technically responsible for the "dismissal" of Lord Melbourne's Government.<sup>3</sup> The Duke of Wellington,

<sup>1</sup> Hearn, *Government of England*, p. 98; Todd, *Parliamentary Government in England* (Spencer Walpole's edition), I, pp. 73, 112.

<sup>2</sup> *Erskine May, Constitutional History* (5th edition), I, pp. 109-16; Hans. Deb. 1st Series, IX, 355-65.

<sup>3</sup> Hans. Deb. 3rd Series, XXVI, 216, 223; Peel, *Memoirs*, II, pp. 31, 32.

on the other hand, denied that the new Government became responsible, and even Baron Stockmar thought the doctrine to be "nonsense".

Hearn<sup>1</sup> had some difficulty in understanding what the doctrine meant. "No man can be criminally responsible for an act which he neither did nor advised, and to which he was not in any way privy"—and it should be added, it is not in any event a criminal offence to dismiss ministers. "It can hardly be contended that any person would be liable to impeachment or any other proceeding on the sole ground that at his Sovereign's command he had accepted office under the Crown, even though prior to his acceptance of such office the prerogative had been wrongly or even criminally exercised"—and, what is more, impeachment is as obsolete as the dodo and it is neither actionable nor criminal to dismiss ministers.

But if criminal liability be thus impossible, the supposed responsibility of an incoming Minister can only mean that, in case of a difference between the Crown and Parliament respecting some exercise of the prerogative, the acceptance of office by a minister in circumstances unfavourable to the opinion of Parliament furnishes to Parliament a reasonable ground of objection to his appointment. If however there be a majority hostile to the Minister, it is not necessary to assign any reason or seek any excuse for advising the King to change his servants; and if there be not such a hostile majority, the disapprobation by either House of the dissolution or other exercise of the prerogative does not, according to modern practice, involve the necessity of resignation.

The truth is that the doctrine is a pure fiction. When it is said that a minister is responsible to Parliament, it is meant that the House of Commons has a right to demand an explanation. If that explanation is not considered satisfactory and the responsibility is collective, the House will vote against the Government and so compel a resignation or a dissolution. In fact, however, as will be explained more fully in a later chapter, such an event rarely happens. If the responsibility is not collective, but the act or advice was due to the negligence of or to an error of judgment by a minister, and the House disapproves, the minister will resign. But to suggest that the House can demand an explanation for a personal act of the monarch from a Government which had

<sup>1</sup> *Government of England*, p. 98.

nothing to do with it, or that the House will censure a Government for an act which the King decided upon in the exercise of his personal prerogatives, is nonsense. If a Government acquiesces in a royal act of which it disapproves, it is answerable for its acquiescence. If it does not acquiesce but resigns, and a new Government is formed, the only question is whether that Government has a majority or can secure a majority at the next election.

Nor can the fiction protect the King from attack. A king who insists on a dissolution or, what is really the same thing, compels the resignations of ministers, will be attacked as a partisan in the House and in the country. No doubt the incoming Government will be attacked too. But all Governments are attacked, and it is the nature of our democratic system that they should be attacked. The impartial person—if such there be—would hold that the acceptance of office might in some circumstances be unconstitutional. But it could never be unconstitutional if the Government secured a majority in the House of Commons or in the country as the result of a personal act of the King. This does not mean, of course, that the King's act might not be unconstitutional; but it would not be unconstitutional to accept office with a majority merely because the King had compelled the resignation of the preceding Government.

## CHAPTER XIII

### Patronage and Honours

#### § 1. *Appointments.*

Lord Melbourne's famous remark, "Damn it, another bishop dead", is succinct evidence of the difficulties attached to the comparatively unimportant function of administering the patronage vested in the Crown and exercised by ministers. Its importance was great so long as the House of Commons was "managed" by the Crown or Government with the assistance of Treasury or Admiralty patronage. But Burke's Economy Act and other legislation and, above all, the passing of the Reform Act, immensely diminished its political value. Sir Robert Peel and Sir James Graham, too, established the system of paying more attention to merit than to political advantage.<sup>1</sup> "The party interests of a Government", said Peel, "are in the long run much better promoted by the honest exercise of patronage than by the *perversion* of it for the purpose of satisfying individual supporters."<sup>2</sup> Similarly, speaking of honours, he said: "I am resolved to consider the power of conferring them as a great public trust, to be administered on some public principle, such as, for instance, the strengthening of the Administration by rewarding those who do not hold office, or, in the case of those who do hold office, bestowing honours as the reward for public service, distinguished either by the length and fidelity of it, or by the eminence of it."<sup>3</sup>

The acceptance of these principles did not imply a complete dissociation between party advantage and the exercise of powers of appointment and conferring honours. Mr Gladstone, as Member of Parliament for Oxford University, was particularly insistent in pressing the claims of his constituents on Lord Palmerston.<sup>4</sup> At least one bishopric was given because the person appointed had been Gladstone's election

<sup>1</sup> See *Peel Papers*, III, ch. xv.      <sup>2</sup> *Ibid.* III, p. 414.      <sup>3</sup> *Ibid.* III, pp. 431-2.

<sup>4</sup> Guedalla, *Gladstone and Palmerston*, pp. 153-5, 187, 189, 232, 236-9, 338.

agent.<sup>1</sup> Few Prime Ministers failed to consider the politics of candidates for preferment, though none went so far in this direction as Mr Disraeli.<sup>2</sup> The important patronage can be divided into three classes, relating respectively to public offices, the Church, and the Judiciary. Appointments of the first class are, strictly speaking, in the hands of the respective ministers. But all important posts are filled after consultation with the Prime Minister. In the most important cases of all, the Prime Minister, in substance, appoints. Thus, he appoints the Viceroy of India.<sup>3</sup> His consent is necessary also to the appointment of the Permanent Secretaries or Under-Secretaries of the Departments of State and other senior officials, acting for this purpose in consultation with the minister and the Permanent Head of the Civil Service.<sup>4</sup> But the relations between ministers and Prime Ministers are not strictly defined.

"The diplomatic appointments", said Sir Robert Peel in 1850, "are disposed of immediately on the advice of the Secretary of State for Foreign Affairs, but the Secretary of State for Foreign Affairs would naturally confer on all important appointments with the First Lord of the Treasury; so, with regard to other offices, I apprehend that there is, or that there ought to be, that intimate concert and cordial union between the persons holding the highest offices in the State, that they would confer together upon every important appointment; I mean, that each head of a department would confer with the First Lord of the Treasury for example, that no colonial appointment would be made without previous communication between the Colonial Secretary and the First Lord of the Treasury. The First Lord of the Treasury would not make an appointment in any department but his own; officially and formally it would be made by the minister who presided over the department,

<sup>1</sup> Guedalla, *Gladstone and Palmerston*, p. 338.

<sup>2</sup> *Life of Disraeli*, II, pp. 397-413; *Letters of Queen Victoria*, 2nd Series, I, pp. 536-7, 554-5. Todd's statement (Spencer Walpole's edition, I, p. 167), that "as a rule the distribution of Church patronage by ministers of the Crown is not influenced by political considerations" is more nearly true to-day than it was when he wrote it. The reason is that the political importance of the Church has declined. Even now political considerations are not always absent. It was probably not entirely a coincidence that Bishop Barnes and Archbishop Temple were promoted on the recommendation of a Labour Prime Minister.

<sup>3</sup> *Life of Lord Randolph Churchill*, I, p. 512.

<sup>4</sup> See *ante*, pp. 114-5.

but there would probably be communication between that minister and the First Lord of the Treasury in regard to important appointments."<sup>1</sup>

Of the 970 or so<sup>2</sup> Church appointments in the gift of the Crown, some 700 are in the patronage of the Prime Minister. They are defined by the value in the King's books in the reign of Henry VIII, all those above £20 being in the gift of the Prime Minister.<sup>3</sup> These obviously include all bishoprics, deaneries and canonries.

The appointment of puisne judges of the High Court rests with the Lord Chancellor. But, at least up to 1850,

The Lord Chancellor has always been in the habit of communicating to me [the Prime Minister], in case of a vacancy, who is the person that, upon inquiry, he thought fittest for the appointment; I take that rather as a piece of information and friendly concert on his part, and I should never think of interfering with his power in that respect, unless, which has never happened, his proposal was, to my mind, very objectionable; the Lord Chancellor takes the Queen's pleasure, and he swears in the new Judge; the First Lord of the Treasury has nothing to do with it.<sup>4</sup>

The practice which Lord Brougham followed was to take the King's pleasure and then to inform the Prime Minister.<sup>5</sup>

Other superior judges, including the Lords of Appeal, the Lords Justices, the Lord Chief Justice, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, and the members of the Judicial Committee of the Privy Council, are appointed by the Prime Minister.<sup>6</sup> The Prime Minister usually consults the Lord Chancellor.<sup>7</sup> Political considerations are not, however, always excluded.<sup>8</sup> When the Coalition Government was formed in 1915, for instance, the Con-

<sup>1</sup> Report from the Select Committee on Official Salaries (B.P.P. 1850, xv), p. 35. For a case in which Lord Derby arbitrated between the Queen and the Secretary of State in respect of the appointment of an Ambassador to Berlin, see *Letters of Queen Victoria*, 2nd Series, I, pp. 461-4.

<sup>2</sup> 309 H.C. Deb. 5 s., 1192.

<sup>3</sup> Report from the Select Committee on Official Salaries (B.P.P. 1850, xv), pp. 134-5 (Evidence of Lord John Russell).

<sup>4</sup> *Ibid.* p. 142.

<sup>5</sup> Brougham, *Life and Times*, III, pp. 86-8.

<sup>6</sup> Report from the Select Committee on Official Salaries (1850), p. 142.

<sup>7</sup> Cf. *Life of Lord Cave*, p. 263.

<sup>8</sup> Todd's statement to the contrary (Spencer Walpole's edition, I, p. 168) needs qualification.



servatives "pegged claims" to certain judicial appointments.<sup>1</sup> Law Officers had had for many years "a sort of claim" to the offices of Lord Chief Justice and Lord Chief Baron.<sup>2</sup> In 1873 the Cabinet recorded an opinion "that, with the passing of the Judicature Act, all claims of either or both Law Officers to a succession as of right to any particular judicial office (claims which were never adequately established) have naturally dropped; so that their promotion would henceforward rest on qualification and service only; not only on the possession of the post of Law Officer".<sup>3</sup> Nevertheless, the Law Officers seem to have established "a sort of claim" to the offices of Lord Chief Justice, Master of the Rolls, President of the Probate, Divorce and Admiralty Division, and Lord of Appeal in Ordinary.<sup>4</sup>

Though, in the last resort, the Sovereign must accept advice as to the filling of such senior appointments, his capacity for resistance is, or may be, substantial. In 1893 the Queen raised objections to the appointment of the Earl of Elgin as Viceroy of India, but Mr Gladstone insisted after consulting some of his colleagues.<sup>5</sup> In 1881 the Duke of Cambridge informed the Queen that if Sir Garnet Wolseley were appointed Adjutant-General he would resign his office as Commander-in-Chief. The Queen thereupon refused her approval. Sir William Harcourt, who was minister in attendance, refused to intervene, but wrote to Mr Gladstone to explain her views.<sup>6</sup> Wolseley was, nevertheless, appointed, the Duke withdrawing his opposition.

The Deanery of Windsor is, however, recognised to be in the gift of the Sovereign.<sup>7</sup> The Queen also claimed the canonries of Windsor,<sup>8</sup>

<sup>1</sup> *Life of Lord Oxford and Asquith*, II, pp. 168-9. At least one more recent example could be quoted.

<sup>2</sup> Report from the Select Committee on Official Salaries (1850), p. 143.

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 290.

<sup>4</sup> Mr Gladstone himself largely contributed to the establishment of the new "claim". For in 1880-3 he seems to have assumed that his Attorney-General, Sir Henry James, was entitled to the offer of, successively, the posts of Lord of Appeal in Ordinary, and Master of the Rolls: *Life of Lord James of Hereford*, pp. 105-16.

<sup>5</sup> *Letters of Queen Victoria*, 3rd Series, II, pp. 300-1, 304.

<sup>6</sup> *Life of Sir William Harcourt*, I, pp. 415-16.

<sup>7</sup> *Letters of Queen Victoria*, 2nd Series, III, pp. 341-2; Guedalla, *The Queen and Mr Gladstone*, II, p. 235.

<sup>8</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 441; 3rd Series, I, pp. 106-7.

though Mr Gladstone denied her title. The Queen explained that, while all submissions came formally from the Prime Minister, she had always mentioned the persons whom she wished to fill the appointments, and that her suggestions had invariably been complied with. Mr Gladstone denied that any suggestions had been made tending to exclude his own initiative.<sup>1</sup> This is one of those questions which can never be resolved. For it is clear that, even in the case of the Deanery, the appointment is "submitted" to the Sovereign.<sup>2</sup> The degree to which the Prime Minister will conform to the Sovereign's wishes in the matter of canonries at Windsor must necessarily depend on the personality of both.

The Queen insisted that her pleasure should be taken to ascertain whether the person recommended for appointment would accept it.<sup>3</sup> But this must obviously depend on the nature of the appointment. It is useless to recommend a king's counsel for appointment as judge unless there is some prospect that he will accept it. In any case, no public announcement must be made until the King's pleasure has been taken.<sup>4</sup>

As in respect of other matters, the Sovereign may rely on "irresponsible advisers". Indeed, it was in connection with Church appointments that Lord Palmerston used the phrase. The Queen asked for more than one name to be submitted for a vacant canonry. Lord Palmerston said that this was "a reference of a recommendation by one of your Majesty's responsible advisers to the judgement of your Majesty's irresponsible advisers in such matters".<sup>5</sup> The Queen replied that she could consult whom she pleased.<sup>6</sup>

Dean Wellesley, Dean of Windsor, who died in 1882, had been cognisant of every Crown appointment in the Church for twenty-five years.<sup>7</sup> Sometimes the Dean's irresponsible advice overcame the Prime Minister's responsible advice. Thus, the Dean recommended Bishop

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, pp. 109-10.

<sup>2</sup> Guedalla, *The Queen and Mr Gladstone*, II, p. 235.

<sup>3</sup> *Letters of Queen Victoria*, 1st Series, I, p. 406; III, p. 242. But the offer of the Deanery to Connor in 1882 was made by Prince Leopold in the Queen's name, and not by Mr Gladstone: *Life of Randall Davidson*, I, p. 76.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, II, p. 161.

<sup>5</sup> *Ibid.* 2nd Series, I, p. 236.

<sup>6</sup> *Ibid.* 2nd Series, I, p. 240.

<sup>7</sup> *Life of Gladstone*, III, p. 93.

Tait as Archbishop of Canterbury. The Queen thereupon wrote that *everyone*, except the extreme men, believed that the Bishop was the most suited to the post. Mr Disraeli replied that among other defects he possessed "a strange fund of enthusiasm, a quality which ought never to be possessed by an Archbishop of Canterbury or a Prime Minister of England". He was, nevertheless, appointed.<sup>1</sup> It should be added that Mr Disraeli's chief objection was that Tait was a Liberal, though "all right on the Irish Church".

For many years the Rev. Randall Davidson, afterwards Archbishop of Canterbury and Lord Davidson, was the Queen's confidential adviser in ecclesiastical matters. As Archbishop Tait's secretary and son-in-law he saw the Queen in connection with the Archbishop's successor.<sup>2</sup> He made a great impression on the Queen, and he was at once asked to find out the state of health of the Bishop of Winchester and the views of the bishops as to the Bishop of Truro.<sup>3</sup> Soon afterwards he was asked to advise about some deaneries,<sup>4</sup> and before very long he received a cypher so as to be able to communicate by telegraph.<sup>5</sup> Being thus in high favour, he was well on the way to promotion, and soon became Dean of Windsor, to Mr Gladstone's evident disgust.<sup>6</sup> As such, he exercised a commanding influence, though an influence largely personal to himself.

The method adopted by the Queen when an important post fell vacant has been described by Davidson himself.<sup>7</sup> The Queen first asked Davidson for information as to the kind of man who ought to hold such a post. When the Prime Minister's informal advice reached her, she sent it to the Dean, by telegraph, if necessary. The Dean then wrote a full memorandum, unless he was satisfied that the proposed appointment was the best possible. The Dean considered that the Queen should exercise her right to veto nominations, but should not make recommendations to fill any particular place. At the same time, he thought it suitable that she should occasionally put before the Prime

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, I, pp. 545-51.

<sup>2</sup> *Ibid.* 2nd Series, III, pp. 365-6, 368-9.

<sup>4</sup> *Ibid.* 2nd Series, III, pp. 380-81.

<sup>6</sup> *Ibid.* 2nd Series, III, p. 421.

<sup>7</sup> *Life of Randall Davidson*, I, pp. 164-5.

<sup>3</sup> *Ibid.* 2nd Series, III, pp. 375-8.

<sup>5</sup> *Ibid.* 2nd Series, III, p. 386.

Minister the names of men who ought to be considered when opportunities should arise. He believed that she was placed in a false position should she mention names for particular appointments and the Prime Minister did not approve of them.

The Dean's influence is obvious in many of the appointments of the period. The method is illustrated by the appointment of the Bishop of London in 1885. On the creation of the vacancy, General Ponsonby wrote to the Dean saying that he had already mentioned to the Queen the Bishop of Exeter. Shortly afterwards Ponsonby wrote again to the Dean to warn him that the Queen had expressed a wish to have the Bishop of Ripon appointed. Accordingly, the Dean wrote to Ponsonby (for submission to the Queen) a letter in which he mentioned politely the claims of the Bishop of Ripon, but discussed in greater detail the claims of the Bishops of Durham, Exeter and Carlisle. Mr Gladstone had already written to the Archbishop of Canterbury to ask about the Bishop of Exeter. Letters then passed between the Archbishop and the Dean, the latter favouring the Bishop of Exeter. Presumably the Archbishop replied accordingly to Mr Gladstone. In the meantime the Dean wrote to Ponsonby suggesting that the Bishop of Exeter was the best candidate. Mr Gladstone then advised that the Bishop of Exeter be translated. The Queen asked the Dean for his opinion; that opinion was, naturally, favourable; and the Queen then approved Mr Gladstone's choice.<sup>1</sup>

Other examples of the Dean's influence may be quoted. On his advice, the Queen refused to appoint Liddon as Bishop of Oxford, the Queen pleading Liddon's ill-health as an excuse for not appointing a Puseyite.<sup>2</sup> In 1889 he suggested somewhat obliquely (after the Queen had broached the subject) that he himself would welcome promotion to a bishopric;<sup>3</sup> but though his claims were supported by the Archbishop and others, they were for the time being ignored by Lord Salisbury.<sup>4</sup> In the following year the Queen suggested his appointment as Bishop of Winchester, and was annoyed when Lord Salisbury hinted

<sup>1</sup> *Life of Randall Davidson*, I, pp. 166-170, 173-6.

<sup>2</sup> *Letters of Queen Victoria*, 3rd Series, I, pp. 426-9; see also 3rd Series, I, p. 536.

<sup>3</sup> *Ibid.* 3rd Series, I, p. 539.

<sup>4</sup> *Ibid.* 3rd Series, I, pp. 540-5, 553-6, 558-63.

that her recommendation was due to personal friendship.<sup>1</sup> The Queen secured support from the Archbishop, but Lord Salisbury refused, and suggested that he should be given Rochester or Worcester.<sup>2</sup> The Queen advised the Dean to refuse.<sup>3</sup> Lord Salisbury's comment on the Dean's qualifications was sent to the Dean who, to his credit, agreed with it.<sup>4</sup> He finally accepted Rochester.<sup>5</sup>

This recital shows, not merely the influence of "irresponsible advisers" but also the advantages of friendship or acquaintance with the Sovereign. The Queen seems to have considered that minor appointments were especially suitable for persons who had assisted in the household of some member of the royal family. Thus, she recommended Mr E. in 1869 for appointment as Commissioner of Customs because Prince and Princess Christian "found it necessary to make some alteration in the arrangement of their Household and consequently Mr E.'s services were no longer required".<sup>6</sup> Mr Gladstone evaded the difficulty by pointing out that the position was to be abolished, and though in 1872 he was compelled to refuse him appointment as Charity Commissioner, he subsequently found him some kind of Secretaryship.<sup>7</sup>

In the previous year the Queen asked for a canonry for Charles Kingsley, on the grounds that his health was bad, he wanted the post, he was very fit for it, and he was a personal friend of the Queen's.<sup>8</sup> Mr Disraeli refused, but Kingsley obtained his stall in 1873.<sup>9</sup> In 1868, also, the Queen asked for a less unhealthy living for Mr B., who had been tutor to the Prince of Wales, and later he received a canonry.<sup>10</sup> Mr D. was recommended for a canonry in 1874 because he had been governor to Prince Leopold and because, apart from other qualifications, it "would gratify her poor sick boy and cheer him up so much".<sup>11</sup> The Queen said that he would be "very acceptable to the Dean of Westminster"—though in fact the Dean has said that "his general qualifications are not quite equal to the occasion",<sup>12</sup> Disraeli gave him the stall

<sup>1</sup> *Letters of Queen Victoria*, 3rd Series, I, pp. 631-4.

<sup>2</sup> *Ibid.* 3rd Series, I, pp. 634-6, 639.

<sup>4</sup> *Ibid.* 3rd Series, I, p. 645.

<sup>6</sup> Guédalla, *The Queen and Mr Gladstone*, I, p. 203.

<sup>7</sup> *Ibid.* I, pp. 341, 349.

<sup>8</sup> *Letters of Queen Victoria*, 2nd Series, I, p. 519.

<sup>9</sup> *Ibid.* 2nd Series, II, p. 248.

<sup>11</sup> *Ibid.* 2nd Series, II, p. 373.

<sup>3</sup> *Ibid.* 3rd Series, I, pp. 639-42.

<sup>5</sup> *Ibid.* 3rd Series, I, p. 648.

<sup>10</sup> *Ibid.* 2nd Series, I, pp. 520, 531.

<sup>12</sup> *Ibid.* 2nd Series, II, p. 375.

and thereby obtained "no little odium".<sup>1</sup> This gentleman had held the post of governor for two and a half years, and had already received a benefice from Mr Gladstone.<sup>2</sup> Nor was King Edward, as Prince of Wales, less forward in urging the claims of his friends.<sup>3</sup>

The Queen's power was, however, used mainly to secure persons of "moderate" views, especially in Church matters. This was especially the case after the beginning of the Oxford Movement. Thus, she expressed to Lord Derby in 1852 "her sense of the importance not to have Puseyites or Romanisers recommended for appointments in the Church".<sup>4</sup> In 1868 she optimistically remarked that "Mr Disraeli will, I think, make good Church appointments, as he sees the force of my arguments in favour of moderate and distinguished men".<sup>5</sup> In truth, Mr Disraeli saw much stronger force in the argument that Conservative patronage ought to create Conservative prelates. Nevertheless, his inability to override his Sovereign except in extreme cases, together with his inability to meet the Queen's arguments (ably provided by her "irresponsible advisers"), compelled Mr Disraeli to give way frequently. With the acceptance of the principle of disestablishment by many Liberals, the Queen's efforts were directed at the end of her reign to keeping out advocates of that principle. Thus, she objected to the appointment of Dr Percival to the see of Hereford because he favoured Welsh Disestablishment. Bishop Davidson pointed out that a refusal to accept Lord Rosebery's advice would lead people to believe that bishops must be of one kind of political opinion only; and Lord Rosebery pointed out that his nominee and he held the same opinions on Disestablishment.

The Queen's influence on Church appointments was peculiar to herself. "Her two successors on the Throne, King Edward and King George, were both alive to the importance of the best Church appointments, and careful to weigh the merits of alternative names before their formal submission; but, generally speaking, they had not the same

<sup>1</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 376-7, 423.

<sup>2</sup> Guedalla, *The Queen and Mr Gladstone*, I, pp. 222-3, 253.

<sup>3</sup> Lee, *King Edward VII*, I, pp. 208-14, 516-17.

<sup>4</sup> *Letters of Queen Victoria*, 1st Series, II, p. 456.

<sup>5</sup> *Ibid.* 2nd Series, I, p. 537.

individual interest in each particular case."<sup>1</sup> King Edward is said to have lost his interest in the appointment of bishops after 1906.<sup>2</sup> Moreover, no Dean of Windsor appears to have been such a "power behind the Throne" after the appointment of Dr Davidson to the bishopric of Rochester. The new bishop continued to act as adviser, especially after his translation to Winchester, when Osborne came within his diocese. Rather, the power of the Archbishop of Canterbury increased through the tendency of the Prime Ministers to rely on him. This was especially noticeable after Dr Davidson became Archbishop; for he was, primarily, an ecclesiastical politician, and he made a point of establishing personal contact with a new Prime Minister. We are told that none of the seven Prime Ministers from Mr Balfour to Mr Baldwin and Mr MacDonald made a single appointment which they knew to be fundamentally objectionable to the Archbishop, though they did not always follow his advice.<sup>3</sup> As soon as a vacancy occurred, the Archbishop wrote to the Prime Minister to explain the peculiar nature of the bishopric. He usually gave a list of three or four names of churchmen who might be regarded as candidates. He made inquiries of other persons as to suitable candidates; and he usually discussed the position both orally and by correspondence with the Prime Minister.<sup>4</sup>

The grant of uniforms to foreign monarchs is not, perhaps, of major importance. But occasionally difficulties have arisen. Thus, the Queen made William II of Germany an honorary Colonel-in-Chief in 1893 without ministerial consent.<sup>5</sup> In 1908 Edward VII made the Tsar of Russia an honorary Admiral of the Fleet without ministerial advice. Mr Asquith felt bound to point out that "it would have been more in accordance with constitutional practice and with the accepted conditions of ministerial responsibility, if before his Majesty's departure, some intimation had been given to me and my colleagues that it was in contemplation.... The Cabinet... is clearly entitled to a voice in such a matter."<sup>6</sup> The King apologised; but Lord Esher suggested that it was

<sup>1</sup> *Life of Randall Davidson*, II, p. 1236.

<sup>2</sup> Lee, *King Edward VII*, II, p. 53.

<sup>3</sup> *Life of Randall Davidson*, II, p. 1237.

<sup>5</sup> *Life of Sir Henry Campbell-Bannerman*, I, p. 128.

<sup>6</sup> *Life of Lord Oxford and Asquith*, I, pp. 249-50.

<sup>4</sup> *Ibid.* II, pp. 1237-8.

"trying the Constitution too high" to allow the King to depart without a minister of the highest rank in attendance.<sup>1</sup>

§ 2. *Titles and Honours.*

The King is the fountain of Honour, and all grants are made by him, but in the selection of the recipients of these grants, as in other things, he is in use not to act upon his own initiative but on the advice of his Ministers. The Minister responsible for the advising is the Prime Minister except in certain special cases, e.g., Order of St Michael and St George,<sup>2</sup> Naval, Military and Air Force honours, Orders of the Star of India and of the Indian Empire, where the Minister in charge renders his advice direct. With these exceptions, and that of the Royal Victorian Order, which is a private Order and is bestowed by the King alone and upon his own selection, no grant of honour is ever made by the King except upon the recommendation of the Prime Minister. Even in the case in which the King might wish that an Order or a Peerage should be given to a member of his own Household, the recommendation would appear on the Prime Minister's list.<sup>3</sup>

The Royal Victorian Chain as well as the Royal Victorian Order is awarded by the King personally.<sup>4</sup> It was agreed between King Edward VII and Lord Salisbury that the Order of Merit should be similarly awarded;<sup>5</sup> but the Order appears now to be awarded on the Prime Minister's advice. It seems, too, that even where some other minister recommends, the Prime Minister is consulted, and that the lists are collated.<sup>6</sup> Certainly the lists are published from Downing Street.

Mr Asquith once said that of all the onerous duties of the Prime Minister "there is none, in my experience, more thankless, more irksome and more invidious than the recommendation of honours to the Crown—worse even than the nomination of bishops, which ranks high among the incongruous and inconvenient duties which our Constitution imposes upon the Prime Minister".<sup>7</sup> But the grant is not entirely in the

<sup>1</sup> *Esher Papers*, II, p. 322.

<sup>2</sup> (Where the recommendations are made by the Foreign, Dominion and Colonial Secretaries.)

<sup>3</sup> Royal Commission on Honours: Report, C. 1789, 1922, p. 99.

<sup>4</sup> Lee, *King Edward VII*, II, pp. 99, 100.

<sup>5</sup> *Ibid.* II, p. 99.

<sup>6</sup> Royal Commission on Honours: Report, p. 6; but the statement is not definite.

<sup>7</sup> 156 H.C. Deb. 5 s., 1770-71.



Prime Minister's discretion. The King is able to resist the grant of honours of which he does not approve. Thus, in 1859, the Queen refused to consent to a Privy Councillorship for Mr Bright, because of his "systematic attacks upon the institutions of the country".<sup>1</sup> In 1886 she refused to create peers on the resignation of Lord Russell, pointing out that such proposals had not been made by Sir Robert Peel or Lord Aberdeen.<sup>2</sup> In 1869 she refused to sanction a peerage for Sir L. de Rothschild, chiefly because he was a Jew, but also because he was a banker engaged in financing foreign governments.<sup>3</sup> In 1881 she firmly resisted Mr Gladstone's advice to make Sir Garnet Wolseley a peer.<sup>4</sup> In 1892 she objected to several peerages.<sup>5</sup> In 1906 King Edward VII objected to several peerages and privy councillorships, but gave way on being pressed.<sup>6</sup>

On the other hand, the Sovereign may press for the conferment of some honour. Thus the Queen wanted Lord Lansdowne to be given a dukedom on his retirement from office as Viceroy of India. Mr Gladstone suggested a G.C.B. The Queen objected to this, but Mr Gladstone, after consulting his colleagues, refused to advise a step in the peerage. Ultimately, it was agreed that the Garter should be offered.<sup>7</sup>

The chief problem of "honours" arises from their use for party purposes. This is, indeed, no new problem. The distribution of honours was one of the more venial methods adopted by Walpole to keep his majority, and its use was continued throughout the eighteenth century. William Pitt, deprived by legislation of part of his patronage, used honours the more to keep his parliamentary majority. With the passing of the Reform Act the situation changed. "Influence" became less important at Parliamentary elections, and a party had to depend more on its policy than on the influence of its supporters. The consequence was, however, a tightening of party bonds and a desire for means of

<sup>1</sup> *Letters of Queen Victoria*, 1st Series, III, p. 446.

<sup>2</sup> *Ibid.* 2nd Series, I, p. 347. See also *ibid.* pp. 552-3.

<sup>3</sup> Guedalla, *The Queen and Mr Gladstone*, I, p. 207.

<sup>4</sup> *Ibid.* II, pp. 141-51, 158-61.

<sup>5</sup> *Letters of Queen Victoria*, 3rd Series, II, p. 86.

<sup>6</sup> Lee, *King Edward VII*, II, p. 451.

<sup>7</sup> *Letters of Queen Victoria*, 3rd Series, II, pp. 340, 345-51, 357.

propaganda. Palmerston, Aberdeen and Disraeli had their "organs" in the press. Disraeli and Joseph Chamberlain took the lead in the development of the great party organisations which gave not merely moral and vocal but also financial support. The first essential of a party is a party fund. It is easier to obtain contributions to that fund in the form of the thousands of pounds of the rich than of the pennies of the poor. But some at least of the rich desire a *quid pro quo*; and since "honours" are prized by many, a promise of an "honour" is sometimes alleged to be the consideration for financial support. It has indeed been said that there was a regular tariff—£50,000 for a barony, £25,000 for a baronetcy, and £15,000 for a knighthood. Certainly there have been "routs" who claimed that, for a promise to pay a sum to party funds, an "honour" could be arranged.

The procedure for making up the political list was thus explained by the Royal Commission on Honours in 1922:<sup>1</sup>

Those rewarded for political services may be divided into the two classes of those who are, and those who are not, members of the House of Commons. As regards the former, the person who would frame and put the list tentatively before the Prime Minister would always be his Patronage Secretary.<sup>2</sup> As regards the second, it would generally be the head of the Party organisation, who might also be the Patronage Secretary. The practice seems to have varied as to how far the list of the Party organiser would be submitted to the Patronage Secretary, if a separate officer, before it found its way to the Prime Minister. There have also been names of persons submitted to the Prime Minister which have not found their way to him through either of the lists mentioned.

It will, of course, be readily understood that this does not mean that the true initiative as to individual names rests with either the Patronage Secretary or the Party manager. Suggestions and applications come from all quarters—sometimes from the candidate for honours himself, but more often from his friends. The friends, in the case of a member of the House of Commons, would probably be members of the House themselves, and in the case of other persons, either the members of the House representing the constituencies where the proposed recipient has

<sup>1</sup> Report, C. 1789, p. 8.

<sup>2</sup> (I.e. the Parliamentary Secretary to the Treasury, otherwise known as the Chief Government Whip.)

had his sphere of activity or influential persons in the party in the same neighbourhood.

From the lists so submitted, and with such advice from either the framers of the lists or from other colleagues as he chooses, the Prime Minister makes his final selection. He naturally enquires from the makers of these lists the claims of each man that is put forward. He must obviously be dependent to a great extent on the information supplied to him, and it is too much to expect that he should be personally conversant with the services and position of every gentleman whose name is on the list. We put the question to each Prime Minister in turn,<sup>1</sup> whether he had ever been cognisant of any bargain or promise to the effect that an honour should be contingent on a contribution to Party funds. We received the answer that we expected, that they had not. Answers to the same effect were given by the Patronage Secretaries and Party managers.

Allegations were made in Parliament in 1894 and 1906 that honours were "purchased" by contributions to party funds. In February, 1914, the House of Lords resolved unanimously:

That in the opinion of this House a contribution to Party funds should not be a consideration to a Minister when he recommends any name for an honour to His Majesty; that it is desirable that effectual measures should be taken in order to assure the nation that Governments, from whatever political party they are drawn, will act according to this rule; and that this House requests the concurrence of the House of Commons in the foregoing Resolution.<sup>2</sup>

The motion was communicated to the House of Commons, but no consequential action was taken by that House. In the House of Lords the existence of the general belief that titles were bought and sold was acknowledged. It was not alleged that the Prime Minister, in recommending names, was aware whether or not there had been a contribution to his party funds. It was alleged only that the Chief Whip (then significantly known as the Patronage Secretary), or one of his subordinates, was so aware, and put forward names to the Prime Minister accordingly. The Marquess of Crewe gave a categorical assurance on behalf of the then Prime Minister (Mr Asquith), that "a contribution to

<sup>1</sup> (I.e. Mr Balfour, Mr Asquith and Mr Lloyd George.)

<sup>2</sup> 15 H.L. Deb. 5 s., 252-96.

the Party funds has not been a consideration to him when recommending names to His Majesty for honours".<sup>1</sup>

The question was twice raised in the House of Lords in 1917.<sup>2</sup> On the second occasion it was resolved unanimously:

(1) That when any honour or dignity is conferred upon a British subject, other than a member of the Royal Family or the members of the Naval, Military, or permanent Civil Service under the Crown, a definite public statement of the reasons for which it has been recommended to the Crown shall accompany the notification of the grant;

(2) That the Prime Minister, before recommending any person for any such honour or dignity should satisfy himself that no payment or expectation of payment to any Party or political fund is directly or indirectly associated with the grant or promise of such honour or dignity.

The motion as framed had a preamble which asserted that the House was "convinced that Ministers have in recent times advised His Majesty to confer honours and dignities on persons who have given or promised money to Party funds as a consideration therefor". This preamble was removed, but only by forty-eight votes to thirty-four; and some at least of those who voted with the majority did so because the preamble appeared to be a censure on the four persons then living who had held the position of Prime Minister. Examples were in fact given which indicated, if not actual cases of buying and selling, at least a system of "touts" or intermediaries who were believed to have the necessary influence.

Lord Selborne said:

I have been told by men who have actually had the offer made to them, who never for one moment thought of asking for an honour or thought that they deserved one, but to whom a person has come and said: "If you will contribute so much to the Party funds I can secure for you such and such an honour"; and the person who has given me that confidence certainly had no doubt whatever in his mind that, if he had agreed to the bargain, he would have received his payment in kind.<sup>3</sup>

He stated, again, that Sir James Gildea, the founder of the Soldiers' and Sailors' Families Association,

was offered £20,000 by one person, £10,000 by another, and £10,000 by a third for the Soldiers' and Sailors' Families Association if he would

<sup>1</sup> 15 H.L. Deb. 5 s., 284.    <sup>2</sup> 26 H.L. Deb. 5 s., 172-212; 835-86.    <sup>3</sup> *Ibid.* 180.

undertake to use any influence he possessed to obtain a baronetcy or a knighthood for the individual. Sir James Gildea said he would have nothing whatever to do with such a transaction; and the single-minded and disinterested philanthropists in question never gave a penny to the Soldiers' and Sailors' Families Association.<sup>1</sup>

Again

Dr Millard...authorises me to say that he had a friend who had done public service in many ways, and, unknown to that friend, he approached the local political association of the Party to which the friend belonged, and asked whether an honour could be obtained for him in reward for his public services. The answer from the leader of the local political association came pat, and these were his words: "Certainly we will consider your suggestion. But we must be quite frank with you. We know it is very objectionable, but we have got to do it. What is your friend prepared to pay?" The reply was that the suggestion had been made quite unknown to his friend, and that he knew his friend would in no circumstances pay anything; and then the matter dropped.<sup>2</sup>

The case following referred to Mr George Holman, seven times Mayor of Lewes. At the end of his seventh mayoralty some of his friends expressed a wish to secure an honour for him. He was willing; and "one of his friends went straight to headquarters to the Whip, and the Whip said: 'Yes, this is a clear case for an honour. What is he prepared to give to my Party fund?' The friend returned to Mr Holman, who refused to give a penny. The friend went back once more to the Whip, and the Whip said on each occasion: 'This is a very good case for an honour, but an honour he shall not have unless he contributes to my Party fund.'"<sup>3</sup>

When Sir George Kekewich was in Parliament at the time of the Licensing Bill (1910),

a friend of his, not unconnected with the trade, came to him and said he wanted a knighthood. He was introduced to the Whip, and he was informed that there was no great difficulty about his request. He was a Liberal, and had been a benefactor of his Borough and Mayor of it. But he was told: "There are two conditions you must fulfil. The first is that you should abandon opposition to the Licensing Bill; the second is

<sup>1</sup> 26 H.L. Deb. 5 s., 845-6.

<sup>2</sup> *Ibid.* 846.

<sup>3</sup> *Ibid.* 846-7.

that you should subscribe £5,000 to the Party funds." He said: "All right, I will do both." His name appeared on the next list of honours.<sup>1</sup>

Lord Knutsford gave another example:

I remember a gentleman, almost unknown, coming to me and asking, as the King was coming down to a certain hospital with which I happened to be connected, whether I thought if he gave £25,000 to the hospital he would be as likely to get a title as if he gave it to the Party funds. Believing that honesty was the best policy, I told him he would be more likely to get a baronetcy if he gave the money to Party funds. Within a short time of that date he came out as a baronet.<sup>2</sup>

Lord Loreburn said: "A personal friend of mine told me that within a period which I will call five or six years he was three times approached with proposals that he should pay £25,000 for a baronetcy or £15,000 for a knighthood." He refused, but a short time afterwards he was told (in his own words) that "there was a chance of pulling it off if he would go to £10,000 for a knighthood", and that if he wanted a baronetcy later "a full valuation for the first honour is allowed, and such candidate has a prior claim".<sup>3</sup> Lord Loreburn added: "Another friend of mine, who has been in a position of official authority...and whom no one could possibly suggest was what you call a 'tout' said to me of the sale of titles, 'Why, I have sold them myself'; and he gave two illustrations."<sup>4</sup>

Earl Curzon of Kedleston, for the Government, apparently defended the practice, though he explained himself better later. Certainly, he defended the giving of titles for "public munificence". "Just as the soldier gives his valour, or courage, or genius; just as the artist gives his talents; just as the captain of industry gives his energy or enterprise; just as the man of science gives his inventions to the service of the State, so the wealthy man gives, and in my view is rightly justified in giving, his wealth, which very often is his only asset, for the benefit of his country."<sup>5</sup> So, a man who has no valour, courage, genius, talents, energy, enterprise, or power of invention, ought to be ennobled if he has money and gives enough of it away.

The first part of the House of Lords resolution was adopted in subsequent honours lists. In March, 1918, it was objected that inadequate

<sup>1</sup> 26 H.L. Deb. 5 s., 847.

<sup>2</sup> *Ibid.* 190-91.

<sup>3</sup> *Ibid.* 837-8.

<sup>4</sup> *Ibid.* 838.

<sup>5</sup> *Ibid.* 200.

information was furnished in the Honours List of January 1st, 1918.<sup>1</sup> It was said, for instance, that a statement that X was "Mayor of Bootle" was not sufficient, since there were many mayors, and some reason ought to be given for choosing one mayor rather than others. The reason was in fact given by the Lord President of the Council. This mayor was mayor of the Chancellor of the Exchequer's constituency and was recommended by him and by another minister.

The belief that honours were bought and sold did not disappear with the House of Lords resolution. In May, 1919, the question was raised in the House of Commons.<sup>2</sup> It was pointed out, *inter alia*, that in the latest honours list, honours were granted to people connected with the *Daily Telegraph*, *Daily Mirror*, *Sunday Pictorial*, *Leeds Mercury*, *Glasgow Daily Record*, *People*, *Evening Standard*, *Daily Sketch*, *Daily Dispatch*, *Evening Chronicle*, *South Wales News*, *Cardiff Times*, and a press agency. Comparing this list with the list of honours granted to the fighting services, it was suggested that the pen was in truth mightier than the sword.<sup>3</sup> A motion that particulars of party funds should be made publishable by law was, however, defeated.

The matter came to a head with the offer of a peerage to Sir J. B. Robinson in 1922. He was resident in South Africa; he was recommended for "National and Imperial Services"; he was stated to be "Chairman of the Robinson South African Banking Corporation", when in fact that company was liquidated in 1905; and he had recently been condemned by the Supreme Court of South Africa to pay heavy damages for an act described by the Chief Justice as "wholly inconsistent with the obligation of good faith". It subsequently appeared that the Secretary of State for the Colonies had not been consulted; and as a result of the agitation Sir Joseph Robinson refused the peerage. Questions were raised in the House of Commons,<sup>4</sup> and debates took place in both Houses.<sup>5</sup> Though no corruption was alleged in this case,

<sup>1</sup> 29 H.L.Deb. 5 s., 513-33.

<sup>2</sup> 116 H.C.Deb. 5 s., 1334-82.

<sup>3</sup> *Ibid.* 1431.

<sup>4</sup> 155 H.C.Deb. 5 s., 1038, 1496, 1662, 1842-8, 2312-14; 156 H.C.Deb. 5 s., 23-4, 367-9.

<sup>5</sup> 50 H.L.Deb. 5 s., 1126-40; 51 H.L.Deb. 5 s., 103-38, 475-512; 156 H.C.Deb. 5 s., 1745-1862.

the general issue was necessarily raised.<sup>1</sup> The Government finally accepted a motion in the House of Lords for the appointment of a Royal Commission.<sup>2</sup>

This Royal Commission, presided over by Lord Dunedin, produced a report in 1922.<sup>3</sup> It recommended:

(i) That a committee of the Privy Council, of not more than three members, be appointed of persons not being members of the Government to serve for the period of the duration of office of the Government; the Committee to have a Secretary taken from the ranks of the Civil Service;

(ii) That before submission to His Majesty of the names of persons for appointment to any dignity or honour on account of political services, the names of such persons should be submitted to the Committee with, appended to each name, the following particulars:

- (a) a statement of the service in respect of which, and the reasons for which, the recommendation is proposed to be made;
- (b) a statement by the Patronage Secretary or Party manager that no payment, or expectation of payment, to any Party or political fund is directly or indirectly associated with the recommendation;
- (c) the name and address of the person who the Prime Minister considers was the original suggestor of the name of the proposed recipient.

(iii) That the Committee, after such enquiry as they think fit, should report to the Prime Minister whether, so far as they believe, the person is, in the whole circumstances, a fit and proper person to be recommended.

(iv) That in the event of the Committee reporting against any name and the Prime Minister determining still to recommend such name, the King should be informed of the report of the Committee.

<sup>1</sup> The duke of Northumberland gave four further examples of "touting". His figures were £10,000 to £12,000 for a knighthood and £35,000 to £40,000 for a baronetcy: 51 H.L. Deb. 5 s., 129. See also 51 H.L. Deb. 5 s., 507-10, for the text of letters addressed to persons who were believed to be likely recipients on payment being made. Lord Carson said: "I have had more than once in my Chambers to advise on cases in which I have examined long correspondence which showed that there was a regular book-keeper, however educated, for the purpose of carrying out and obtaining honours": 51 H.L. Deb. 5 s., 136.

<sup>2</sup> It is significant that none of the Whips spoke in the House of Commons, and that no former Chief Whip spoke in any House of Lords' Debate.

<sup>3</sup> Royal Commission on Honours: Report, C. 1789/1922.



(v) That an Act be passed imposing a penalty on anyone promising to secure, or to endeavour to secure, an honour in respect of any pecuniary payment or other valuable consideration, and on any person promising such payment or consideration in order to receive an honour.<sup>1</sup>

These recommendations were accepted by the Government. The Committee of Privy Councillors was constituted and is still in existence.<sup>2</sup> The last recommendation was put into effect by the Honours (Prevention of Abuses) Act, 1923. It should be added that the Lists have returned almost to pre-war size, and that accusations of "purchase" are much less frequent. There has been some evidence of "touting", but no evidence that the touts had any authority or power to secure the conferment of honours.

Lists are issued normally on January 1st and on the King's Birthday every year. But on any special occasion, such as a Coronation or a Jubilee, a special List is issued. On any such special occasion it is the practice of the Prime Minister to ask the Leader of the Opposition to make a few nominations.<sup>3</sup>

<sup>1</sup> Royal Commission on Honours: Report, C. 1789/1922, pp. 11-12.

<sup>2</sup> For the names of the three members in 1923, see 57 H.L. Deb. 5 s., 1068; for the names in 1927, see 206 H.C. Deb. 5 s., 392.

<sup>3</sup> 156 H.C. Deb. 5 s., 1771 (1922), per Mr Asquith.

## CHAPTER XIV

# Government and Parliament

### § 1. *The Strength of the Government.*

It is not untrue to say that the most important part of Parliament is the Opposition in the House of Commons. The function of Parliament is not to govern but to criticise. Its criticism, too, is directed not so much towards a fundamental modification of the Government's policy as towards the education of public opinion. The Government's majority exists to support the Government. The function of the Opposition is to secure a majority against the Government at the next general election and thus to replace the Government. This does not imply that a Government may not be defeated in the House of Commons. Nor does it imply that Parliamentary criticism may not persuade the Government to modify, or even to withdraw, its proposals. These qualifications are important; but they do not destroy the truth of the principle that the Government governs and the Opposition criticises. Failure to understand this simple principle is one of the causes of the failure of so many of the European progeny of the Mother of Parliaments and of the supersession of Parliamentary Government by dictatorships.

It is said that the House of Commons controls Parliament, and the lawyers point to the power of the House of Commons to refuse to legalise the Army and the Air Force and to refuse supplies, and then to compel a Government to resign. It might perhaps be enough to point out that the House of Lords could similarly refuse to assent to the annual Army and Air Force Bill and that it could, before 1911, refuse supplies, and that it has not been suggested since 1832 that the Government is responsible to the House of Lords. But, in truth, the fundamental criticism of the proposition is that it ignores the party system and thus ignores the fact that, through the party system, it is the Government that controls the House of Commons.

Lord Palmerston once expressed the opinion that the life of the strongest Government was not worth more than three months' purchase.<sup>1</sup> His own Government of 1855 secured a great majority at the election of 1857 but was turned out in 1858. Yet his experience was wholly exceptional; and the life of a Government with a majority is really determined by the date fixed under the Parliament Act for the termination of Parliament. It is a very incompetent Government that cannot maintain its majority until, in due course, it appeals to the people.<sup>2</sup>

Burke's doctrine that the member of Parliament is returned to exercise his judgment on the facts and proposals put before him was probably not true of the Parliaments of George III and is certainly not true of the Parliament of George VI. The successful candidate is almost invariably returned to Parliament not because of his personality nor because of his judgment and capacity, but because of his party label. His personality and his capacity are alike unknown to the great mass of his constituents. A good candidate can secure a number of votes because he is good; a bad candidate can lose a few because he is bad. Local party organisations therefore do their best to secure a candidate of force and character. But his appeal is an appeal on his party's policy. He asks his constituents to support the fundamental ideas which his party accepts. His own electioneering is far less important than the impression which his party creates in the minds of the electors. They vote for or against the Government or for or against the party to which he belongs. The "national" speaker who comes into a constituency to urge electors to support the candidate probably knows nothing of him. He commends the candidate because he supports the party; he would condemn him with equal pleasure if he did not. Many of the posters are prepared and circulated by party headquarters. The candidate's own posters emphasise his party affiliation. He possesses an "organisation" because the party supporters in the locality—stimulated, if necessary, by the party headquarters—believe in the party policy sufficiently strongly to give time and trouble to its work.

<sup>1</sup> *Life of W. H. Smith*, II, p. 180.

<sup>2</sup> Even when it appears to have nine-tenths of the people against it, as with respect to the peace proposals made by France and Great Britain to Abyssinia and Italy in December, 1935.

The member of Parliament is thus returned to support a party. He recognises his party obligations by receipt of the "whip"; if he disagrees with the party policy on a particular matter, he may abstain from voting. Occasionally, perhaps, he votes against his party. If he does so too frequently, he loses the "whip"; and this means, probably, the loss of party support at the next election. Without that support, he will probably not be elected. Also, his party loyalty as well as his self-interest will induce him normally to vote with the party. Above all, a supporter of the Government is very unlikely to take any step which will defeat the Government. For, if it is defeated on a major issue, it will resign or dissolve Parliament. If it resigns, he has assisted the formation of a Government by the Opposition, which is *ex hypothesi* worse than that which he was elected to support. If Parliament is dissolved, he will have to undergo the trouble and possibly the expense of an election; and it may not be certain that he will be re-elected.

A Government which has a majority thus has the means for maintaining its majority. The energy of the Whips' organisation is primarily directed to that end. The Government has, above all, the effective weapon of the dissolution. It can hold the threat above members' heads like a big stick. At a dissolution anything may happen. Lukewarm friends will almost certainly disappear. When the Conservatives were inclined to be rebellious in 1916, Mr Bonar Law threatened that the Government might advise a dissolution. Mr Winston Churchill declared that the suggestion was the most "terribly immoral thing" he had ever heard.<sup>1</sup> For a Government which is conducting a war can appeal to the "patriotism" of the nation to save it from its friends. It can show the flag and beat the drum. It can complain that the "nation" is in peril because it is not being adequately supported. It can assert that opposition is treason. The result, as the "khaki" elections in 1900 and 1918 showed, and as was shown in the not very dissimilar conditions of 1931, is enormously to strengthen the Government and to decimate its opponents. In normal conditions the power is not so great, but it is nevertheless effective. "I defy you on this motion and on all other motions which you may make; I defy your majorities. I stand by the

<sup>1</sup> Beaverbrook, *Politicians and the War*, II, pp. 106-7.

Crown and shall appeal to the people." So said Canning in 1807;<sup>1</sup> and so might say, in more diplomatic language, the Prime Minister of to-day.

A Government which possesses a real majority can thus be reasonably certain of maintaining itself in power as long as the Parliament lasts. It can secure the passage of its proposals. Even when it is defeated, it can ask the House to reverse its decision, like Peel in 1844.<sup>2</sup> "I have great confidence", said Peel, "in the effect of a steady declared intention of a Government to carry a particular measure, or to throw on others the responsibility of defeating it."<sup>3</sup>

It does not follow, and it is not true, that a Government in possession of a majority forms a temporary dictatorship. It can, no doubt, press unpalatable measures upon the House. Yet, as Peel also said: "Menaces of resignation if the House of Commons do not adopt certain measures are very unpalatable, and I think they should be reserved for very rare and very important occasions."<sup>4</sup> The Government's majority is its authority; that majority rests upon popular support. If either disappears, the Government, too, will disappear in due course. The member's most precious possession is his party label; but the label is valueless unless the electors give it a value. If he desires to maintain his majority, he must keep in close touch with his constituency. He will soon become aware that the tide of the Government's popularity is receding. He will become more and more obstreperous as his electoral support falls away. It has been said that Governments, like men, no sooner begin to live than they begin to die. But if they manage well, they may be an unconscionable time a-dying; and if they manage ill they will die young. In this sense a party leader may say with Carlyle: "I am their leader, therefore I must follow them." A Government must perpetually look over its shoulder to see whether it is being followed. If it is not, it must alter direction. For in this sense, and in this sense only, is it true that a democracy is government of the people by the people.

<sup>1</sup> Quoted by Dr Lushington, *Parl. Deb.* 2nd Series, vol. 58, col. 1010.

<sup>2</sup> *Peel Papers*, III, pp. 147-53.

<sup>3</sup> *Ibid.*, III, p. 175. For other examples of a reversal of a House of Commons decision, see *Letters of Queen Victoria*, 3rd Series, II, pp. 382-3 (1894); Lee, *King Edward VII*, II, pp. 186-7 (1905); Ullswater, *A Speaker's Commentaries*, II, pp. 130-3 (1912).

<sup>4</sup> *Peel Papers*, III, p. 354.

It follows that a Government, even with an enormous majority, cannot neglect the feeling of the House. The temperature of the party is, in large measure, the temperature of the electorate. A minute Opposition, like the Labour Opposition of 1931-5, uses its opportunities to appeal to the public opinion. The House is its platform, the newspapers are its microphones, and the people is its audience.

Two recent examples may be cited. The National Government of 1934 had an unprecedented majority. It introduced what it called "a very little Bill" to provide powers to protect the armed forces from propaganda.<sup>1</sup> But as soon as the provisions of the Incitement to Disaffection Bill became known there was an immediate outcry. Opposition within the House of Commons made common cause with opposition without. The whole technique of propaganda—articles, pamphlets, letters to the press, meetings—was used to attack what was commonly called the "Sedition Bill". The Government soon realised, both directly and indirectly through the House of Commons, that it was gaining no credit and not a little discredit. Its prestige was implicated and the Bill was passed. On every vote it had a substantial and, indeed, overwhelming majority. But so great was the outcry that substantial amendments had to be accepted. The Bill as passed was very different from the Bill as presented; and public opinion had amended it.<sup>2</sup>

Even more noteworthy was the effect of public opinion on the Anglo-French proposals for a settlement of the Italo-Ethiopian dispute in December, 1935. These proposals were agreed upon by the Foreign Secretary and the French Prime Minister in Paris. They were communicated to the Prime Minister by messenger and were presented to the Cabinet. In the meantime they had become known to the press in Paris, and were reproduced in the London newspapers. There was an immediate outcry on what the Prime Minister called "the ground of conscience and honour".<sup>3</sup> "I know that something has happened", said

<sup>1</sup> It has been suggested that the Bill was not referred to the Attorney-General before it came to the Home Affairs Committee, because it was regarded as uncontroversial.

<sup>2</sup> See Jennings, "The Technique of Opposition", *Political Quarterly*, VI, pp. 208-21.

<sup>3</sup> 307 H.C. Deb. 5 s., 2030.

Mr Baldwin, "that has appealed to the deepest feelings of our countrymen, that some note has been struck that brings back from them a response from the depths."<sup>1</sup> Here there was no organisation of public opinion. The proposals produced a spontaneous outburst which led at once to protests among all sections of the population, and on both sides of the House of Commons.

The Cabinet was faced with the choice of approving the proposals or of publicly repudiating the action of the Foreign Secretary. It chose the former. But the opposition increased and the sense of outrage became more widespread. Only three weeks before, the Government had secured a majority of 250 as the result of the general election. That majority, faced with its election promises and the public outburst, could no longer be relied upon. The Opposition put down a motion which was, in substance, a vote of censure. A motion from the Government side sought to condemn the proposals. The Cabinet had not liked the proposals when first it saw them. Faced with the expressions of public concern, it reconsidered the situation. It felt that "there could not be the support in this country behind these proposals even as terms of negotiation".<sup>2</sup> It "felt that there could not be that volume of public opinion which it is necessary to have in a democracy behind the Government in a matter so important as this".<sup>3</sup> It decided to reverse its decision. The Foreign Secretary resigned. "There is the hard ineluctable fact", he said, "that I have not got the confidence of the great body of opinion in the country, and I feel that it is essential for the Foreign Secretary, more than any other Minister in the country, to have behind him the general approval of his fellow-countrymen. I have not got that general approval behind me to-day, and as soon as I realised that fact, without any prompting, without any suggestion from anyone, I asked the Prime Minister to accept my resignation."<sup>4</sup> "It is perfectly obvious", said the Prime Minister, "that the proposals are absolutely and completely dead."<sup>5</sup> (Public opinion had killed them.) An amendment to the Opposition motion was drafted by the Government and some of its

<sup>1</sup> 307 H.C.Deb. 5 s., 2030.

<sup>3</sup> *Ibid.* 2031.

<sup>5</sup> *Ibid.* 2031.

<sup>2</sup> *Ibid.* 2030-31.

<sup>4</sup> *Ibid.* 2012.

supporters; it condemned the proposals only by implication and assured the Government of the full support of the House "in pursuing the foreign policy outlined in the Government manifesto and endorsed by the country at the recent general election"—a policy with which, it was agreed by most, the proposals were not in accord. That amendment was carried as a substantive motion by a majority of 225. The Government remained in office, but the proposals had been killed.

"The possession of power", as Sir James Graham remarked, "is the sole object of political warfare."<sup>1</sup> But Governments must so conduct their side of the political war that they maintain themselves in power. This compels a sensitiveness to public opinion that no other form of government provides. Political power rests on public opinion; and such opinion is expressed not merely at a general election but by all the instruments which a free people possesses.

These considerations are important. They qualify the power of a Government. It is nevertheless true that the Government controls the House of Commons. No Government with a majority has been overthrown by the House of Commons since 1895—and then the Government resigned because of its internal dissensions and used the defeat as an excuse. The Government of 1886 was defeated because of the defection of a section of its party on a major issue. In 1885 the Government was breaking up. Not since 1866 has there been any real "control" of the Government by the House of Commons. A majority Government can be defeated only by reason of a party split. So long as the party holds, it is the Government that controls the House, and not the House that controls the Government.

The House possesses the instruments necessary to determine the fate of Governments. If it fails to approve the Government's policy the Government must resign or dissolve Parliament. If a Government has really lost the confidence of the House of Commons, the House can make the army and air force illegal by refusing to pass the annual Army and Air Force Bill; it can make the levying of income tax and surtax unlawful by failing to pass the Finance Bill; it can prevent the expenditure of money on the Supply Services by failing to pass the

<sup>1</sup> *Life of Sir James Graham*, I, p. 289.



Appropriation Bill. These powers are mentioned in all the books. They are important elements in strengthening the constitutional conventions that govern Cabinet government. But their practical importance is small.

The "confidence" of the House of Commons has a more complex annotation. If the Government has a majority, it is merely the confidence of the party in its leaders. It becomes important only when no party has a majority. For then the simplicity of Cabinet government breaks down and new considerations become important.

Minority Governments are more common than is commonly supposed.<sup>1</sup> They are undoubtedly weaker than majority Governments. Gladstone rightly regarded the existence of the Peelites as a source of weakness in the Constitution.<sup>2</sup> The Irish until 1914, the Labour Party from 1910 to 1914, and the Liberal Party since 1924, have similarly obstructed the normal working of the party system. A system of proportional representation—whether desirable or not on other grounds—would certainly weaken the Government and so provide an argument for the enemies of democracy.

Yet a Government without a majority is not entirely disarmed. It still possesses the weapon of dissolution. It is, it is true, a double-edged weapon. The major party in opposition can always point to the weakness of the Government as if the Government itself was at fault. It can always assert that since the Government cannot obtain a majority, it is better to give the Opposition a majority. But, as against the third party, it is effective. For both logic and experience suggest that the third party risks decimation in a dissolution. Its supporters will be critical whether it supports the one party or the other—and it cannot continue to give support to neither. Discriminating support tends to appear in practice to be mere wavering, however logical it be in theory. One at least of the other parties, if not both, tends to advance upon its terrain in order to catch some of its votes. It offers no career to ambitious men. It causes electors to ask whether they need cast their votes into the void. The young electors tend to see their choice as one of alternatives, not of

<sup>1</sup> See *ante*, pp. 26–7.

<sup>2</sup> *Life of Gladstone*, I, pp. 540, 552, 558.

three different courses. These reasons explain the gradual weakening of the Liberal Party in recent years, and not defects of personnel or lack of constructive thought.

Thus, a dissolution is a greater menace to the third party than to the Government supporters. Though it can modify the Government's policy, it must accept much that it cannot approve. The Liberal Party learned the lesson of 1924, gave the Labour Government of 1929 two years of office, and had no hand in its fall. Moreover, the existence of the third party is itself a menace to the Government's supporters. Rebellion is less possible because its consequences are more obvious. The member of a huge majority can exercise some discrimination in his support; the support of a minority Government must be unwavering. Minority Governments are weaker than majority Governments, but they are not so weak that they cannot govern.

British Governments are in fact expected to govern. If necessary, they are expected to act even when they have no legal powers. They can rely on their majorities and on the common sense of the House to ratify their acts. There is and can be no limitation on retroactive legislation. A Government can act first and ask for approval afterwards. It can declare war though it has not the power to place the forces on a war footing—though it is the duty of the Government to summon Parliament at once.<sup>1</sup> It can take precautionary measures in case war breaks out: in 1870 the Cabinet authorised the War Office to exceed the vote for ammunition.<sup>2</sup> It can enter into treaties without Parliamentary sanction and accept obligations even when legislation is necessary. Secret treaties were made in 1898 and 1900 and not published until after 1918.<sup>3</sup> It can authorise the Bank of England to break the law—as when the Bank Charter Act was suspended in 1847 and 1857 and when the Bank was authorised to suspend payments in gold in 1931—though again the immediate summoning of Parliament is necessary. The Government of 1847 spent a million pounds a month on the relief of

<sup>1</sup> *Life of Lord John Russell*, II, p. 285; *Letters of Queen Victoria*, 2nd Series, II, p. 38; Fitzroy, *Memoirs*, pp. 495, 560.

<sup>2</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 47.

<sup>3</sup> *Life of Joseph Chamberlain*, III, pp. 319-20.

destitution in Ireland without prior Parliamentary sanction.<sup>1</sup> These are examples only of the great emergency powers which the British Government possesses because it has behind it the support of a majority of the House of Commons.

Yet that majority must be treated with respect. It excepts full information on all matters which can reasonably be made public. Questions are addressed to ministers on all aspects of administration, though it always accepts a statement, *prima facie* justified, that the disclosure of information would not be in the public interest. It supports the Government in refusing to disclose the use of secret service money or the operations of the Exchange Equalisation Fund. It did not know that from 1783 to 1886 a sum of £10,000 a year of the secret service money was used for political purposes.<sup>2</sup> It does not know to-day how much remains—or how much profit has been made—from the large sum voted for the Exchange Equalisation Account. It does not ask—or, if it asks for it, it supports the minister in refusing—information as to the plans of the Committee of Imperial Defence, the amount and kinds of ammunition available,<sup>3</sup> or the efficacy of new engines of war.<sup>4</sup> In consequence, the country was pledged in honour by the military “conversations” between the military experts of Great Britain and France before 1914 when Parliament knew nothing of them. When a question was asked in the House of Commons, Sir Edward Grey was deliberately evasive. “Parliament has”, he wrote years later, “an unqualified right to know of any agreements or arrangements that bind the country to action or restrain its freedom. But it cannot be told of military and naval measures to meet possible contingencies. So long as Governments are compelled to contemplate the possibility of war, they are under a necessity to take precautionary measures, the object of which would be defeated if they were made public.”<sup>5</sup> This explanation may be

<sup>1</sup> Disraeli, *Life of Bentinck*, p. 258.

<sup>2</sup> *Life of Lord Randolph Churchill*, II, p. 186.

<sup>3</sup> Cf. Campbell-Bannerman's attitude on the cordite vote of 1895; *Life of Sir William Harcourt*, II, p. 363.

<sup>4</sup> As to other military matters, see Todd, *Parliamentary Government in England* (Spencer Walpole's edition), I, pp. 162-4.

<sup>5</sup> Grey, *Thoroughbred Years*, I, pp. 289-90.

held by some to understate the nature of the "conversations": but the Government alone can judge.

It is, in short, the function of the Government to govern and of the House of Commons to criticise. But there are limits to the scope of criticism; and if the Government asserts that discussion is not in the public interest the House can do no more than accept the decision. Even where publication of information is not inimical, the powers of the House are limited in fact. It is a deliberative assembly, not a governing body. In discussing Mr Roebuck's motion on the conduct of the Crimean War, Mr Gladstone said: "Your business is not to govern the country, but it is, if you think fit, to call to account those who do govern it."<sup>1</sup> "Those powers which this House undeniably possesses", he said later, "are powers that, if used without stint or guard, would enable it to throw the whole country into confusion; but it is the wise and prudent limitation which the House has itself put upon its own powers that enables it to emit and to wield its enormous force without crushing to atoms the other bodies which exercise power or are charged with power in this country."<sup>2</sup>

His conclusion, that an inquiry into the conduct of the Crimean War was an abuse of the powers of the House, was perhaps not the necessary consequence of his premises. Mr Disraeli<sup>3</sup> and Lord John Russell,<sup>4</sup> at least, thought so. Nor do serious results appear to have followed from Lord Palmerston's subsequent acceptance of an inquiry or from the Dardanelles and Mesopotamia Reports during the recent war. It is recognised that where the exercise of the Royal prerogative is in dispute, the House ought not to appoint a Select Committee.<sup>5</sup> It can, however, address the Crown to appoint a Royal Commission. The former method is technically an inquiry by Parliament, the latter an inquiry by the Crown; but the result is the same, an examination and public report of the conduct of ministers. Even so, the Government has its majority.

<sup>1</sup> *Parl. Deb.* 3rd Series, vol. 136, col. 1202.

<sup>2</sup> *Ibid.* 1840. See also *Life of Sir James Graham*, II, pp. 268-9.

<sup>3</sup> *Parl. Deb.* 3rd Series, vol. 136, col. 1208.

<sup>4</sup> *Life of Lord John Russell*, II, p. 238.

<sup>5</sup> See the debates on the "sale" of honours in 1922. 51 H.L. Deb. 5 s., 103-38; 156 H.C. Deb. 5 s., 1745-1862; and *ante*, pp. 358-9.

It accepts a motion for an inquiry only because it thinks there is a good answer to accusations, or because it believes that there have been defects of administration not due to its own members, or because the state of public opinion renders politic the acceptance of the demand for inquiry. If it insists on objecting to an inquiry, as when General Sir Frederick Maurice accused Mr Lloyd George of making false statements in 1918, the House has the option of "white-washing" the Government or of breaking it up.<sup>1</sup>

At the same time, few would be disposed to agree with Sir James Graham's statement: "the House of Commons, although a good judge of the merits of an Administration and of their merits as a whole, is bewildered in a labyrinth of details and miscarries in its judgment when it attempts to deal with minute particulars. It is safer and easier to displace a Ministry than to change and direct its policy by the active intervention of Parliament."<sup>2</sup> A Government will not give way on a major question of policy. Parliamentary criticism of details compels the Government, by an appeal to public opinion, and its reaction in the House, to modify its attitude, and to qualify the application of its principles, without overthrowing the principles themselves. It is only by an attack on details that "concessions" can be secured.

One may suspect, too, that the Queen's constant attempts to limit Parliamentary interference<sup>3</sup> were due primarily to her antipathy to democratic government. It would be possible to strengthen Parliamentary control of administration without appreciably weakening the Government.<sup>4</sup> For the power of the Government rests on its majority, not on any abnegation of control by the House of Commons. The suggestion to the contrary in the Report of the Joint Select Committee on Indian Constitutional Reform<sup>5</sup> is a confusion of thought. The tradition of Parliament that "His Majesty's Opposition" shall not be

<sup>1</sup> See 105 H.C. Deb. 5 s., 2347-402.

<sup>2</sup> *Life of Sir James Graham*, II, p. 316.

<sup>3</sup> See, for example, *Letters of Queen Victoria*, 1st Series, III, p. 218; *ibid.* 1st Series, III, p. 221; *ibid.* 2nd Series, III, pp. 107-14; Guedalla, *The Queen and Mr Gladstone*, I, pp. 341-2.

<sup>4</sup> See Jennings, *Parliamentary Reform*, pp. 140-61.

<sup>5</sup> Report of the Joint Select Committee on Indian Constitutional Reform, vol. I, Part I, p. 62.

oppressed is not a tradition merely; it rests on policy. Given free elections, an Opposition that is not allowed to oppose in Parliament is by that fact supplied with arguments for opposition in the country. If it can be asserted that the Government fears criticism, it can be suggested with considerable force that there is ground for criticism. The Opposition is given a forum in Parliament because if it were not it would be given a convincing argument in the forum of the country.

It follows that much must be brought under the cognizance of Parliament even when new legal powers are necessary. Secret treaties, for instance, can be made. But there are limits to the effective powers of the Government. When suggestions for a formal alliance with France were made in 1906 Sir Edward Grey told the British Ambassador in Paris that "it was too serious a matter to be kept secret from Parliament. The Government could conclude it without the consent of Parliament, but it would have to be published afterwards. No British Government could commit the country to such a serious thing and keep the engagement secret".<sup>1</sup> It would be impolitic for the Government and it would fail of its effect; for British Governments may fall by the operation of the electoral system, and no incoming Government would uphold such an engagement made without the consent of Parliament. Mr Gladstone's dictum, that "an incoming Government must recognise existing obligations"<sup>2</sup> would not apply to such an undertaking. It is well settled that important treaties must be laid before Parliament.<sup>3</sup> The alienation of territory needs Parliamentary sanction by resolution, though legislation is perhaps not necessary.<sup>4</sup> This need for Parliamentary approval has the advantage, as Lord Palmerston pointed out, that it compels the Government to give its engagements precise form.<sup>5</sup> It cannot, however, prevent "obligations of honour" similar to that which arose through the military "conversations" of 1905 to 1914.<sup>6</sup> In 1924 the Labour Government announced that it would submit all treaties to

<sup>1</sup> *Life of Sir Henry Campbell-Bannerman*, II, p. 255.

<sup>2</sup> *Life of Gladstone*, II, p. 627.

<sup>3</sup> Cf. the Russian Treaty of 1924; Snowden, *Autobiography*, II, p. 685.

<sup>4</sup> See the precedents of 1890: *Life of Robert, Marquis of Salisbury*, IV, p. 300; and of 1904: Lee, *King Edward VII*, II, pp. 251-3.

<sup>5</sup> Ashley, *Life of Lord Palmerston*, II, p. 103.

<sup>6</sup> See *ante*, pp. 370-1.

Parliament and lay them on the table for twenty-one days before proceeding to ratification.<sup>1</sup> The succeeding Government refused to follow this practice.<sup>2</sup> It was restored by the Labour Government in 1929,<sup>3</sup> but has presumably not been followed by its successors, though no formal announcement to that effect appears to have been made. The practice is in any event not binding on Governments which desire not to follow it.

It must not be thought, however, that Parliamentary control weakens the Government. The Government that dares to make its policy open and secures the support of the elected representatives of the people is strengthened in the international arena. A Government which has secured a majority at an election speaks for a nation. Even if ten million people have voted against it, it has the support of that ten million in all reasonable actions. For those ten million people admit the right of the majority to determine national policy; and in so admitting they acquiesce in the policy that is followed. They know that they can criticise; they are aware that their criticism will have effect on a Government whose whole basis is popular support; they know that a comparatively small change of opinion will, in the near future, alter both Government and policy; and they know, above all, that the Government knows it, and will act accordingly. The Government has to be sure that it is being followed; but, if it is, its support rests on willing consent. A consent which is obtained by force or "spoils" or propaganda can always be undermined. It may be destroyed by a bullet or a bomb. The power that creates a dictator may destroy him. Responsible ministers die in bed.

It is, indeed, an advantage to be openly attacked. For attack implies defence. An attack that appeals to reason can be met by a defence that also appeals to reason. Writing of 1914, Mr Winston Churchill has said: "No Parliamentary attack gave me an opportunity of defending myself."<sup>4</sup> In that statement lies the fundamental principle of Cabinet government. The history of the Poor Law Commissioners of 1834-47 supplies an instructive lesson. They had substantial powers of government in respect of a service which profoundly affected the lives of many

<sup>1</sup> 171 H.C.Deb. 5 s., 2001-6.

<sup>3</sup> 230 H.C.Deb. 5 s., 408.

<sup>2</sup> 179 H.C.Deb. 5 s., 565.

<sup>4</sup> Churchill, *World Crisis*, I, p. 398.

people (not, however, electors). They were, nevertheless, freed from Parliamentary control; they had no representative in Parliament. They were the subject of constant attack and they had no means of public defence. In 1847 they were superseded by a Poor Law Board, with a responsible minister. Sir George Cornwall Lewis, himself a Commissioner, had some doubts about the result.

If it should be found in experience that the direct representation of the Poor Law Commission in Parliament leads to the abandonment of some wholesome regulations which are in force, and renders the administration less impartial, this change must be imputed to our Parliamentary constitution, and not to the Poor Law Department or the existing administration. Parliament is supreme, and we cannot be better governed than Parliament is willing to govern us. It is vain for a body of subordinate functionaries to attempt to enforce, on such a subject as the Poor Laws, opinions which are repudiated by the majority of the sovereign legislature.<sup>1</sup>

He himself supplied the answer. The immediate result of the Act was that "the horrors of workhouses, and the blessings of out-door relief, are now as much forgotten in the House of Commons as if they had not been mentioned".<sup>2</sup> A modern historian has commented, "from an official point of view, the great merit of this beautiful machinery for enabling the ordinary citizen<sup>3</sup> to make his voice heard effectively was that it was even more effective than in keeping him silent".<sup>4</sup> An attack is dangerous only to those who have not the means for defence.

#### § 2. *The Government, the House of Lords and the Electorate.*

"With a majority in the House of Commons all things are possible; without it, nothing is safe".<sup>5</sup> said Sir James Graham. A Conservative politician may be excused for forgetting the House of Lords; members of other parties cannot forget. Until 1911 the House of Lords possessed, at least in theory, an equal power of rejecting legislation, subject only to the remote possibility of the creation of peers<sup>6</sup> or the stopping of supplies.

<sup>1</sup> *Letters of Sir George Cornwall Lewis*, p. 151.

<sup>2</sup> *Ibid.* p. 186.

<sup>3</sup> *Sic.* He means that small section of the citizens to whom the vote was given under the Reform Act of 1832.

<sup>4</sup> G. Slater in Laski, Jennings and Robson, *A Century of Municipal Progress*, p. 343.

<sup>5</sup> *Peel Papers*, II, p. 428.

<sup>6</sup> *Ante*, pp. 319-38.



Nor did it hesitate overmuch to use that power. Yet it has never been assumed since 1832 that the House of Lords could, by its vote, overthrow a Government. "The day is gone when a conclave of Dukes could sway a Parliament", said Sir James Graham in a completely different connection in 1859.<sup>1</sup> In 1839 the House of Lords voted for a Select Committee on Ireland. The Government then asked the House of Commons for a vote of confidence.<sup>2</sup> Sir Robert Peel objected, not because the confidence of the House of Commons could not override the lack of confidence of the House of Lords, but because "the opinions of one branch of the Legislature ought to be inferred from its general proceedings—from the support or opposition it may give to measures of the Government—than from abstract declarations".<sup>3</sup> Again in 1850 the Government was defeated in the House of Lords, this time in a debate on the Don Pacifico dispute. A resolution of confidence was moved and passed in the House of Commons.<sup>4</sup> Since then, Governments have often been defeated in the Upper House, but a resolution of confidence in the Commons is no longer regarded as necessary.

The explanation is, not that the House of Commons can stop supplies—for the House of Lords could before 1911 stop supplies as it rejected the Finance Bill in 1909—but that the power of the Government rests on the support of the electorate. The electorate chooses the party complexion of the Government. It votes in effect for a Prime Minister.<sup>5</sup> Given that support, the Prime Minister dissents respectfully from the Sovereign and snaps his fingers at the peers. So certain is it that the electorate is the basis of all governmental power, that a Government which is defeated at the poll resigns at once, without going through the formality of a vote of no-confidence in the House of Commons.

Lord John Russell admitted in 1841 that the election had decided the fate of the Government and the Tory newspapers unanimously condemned the Whigs for meeting Parliament before resigning.<sup>6</sup> But the

<sup>1</sup> *Life of Sir James Graham*, II, p. 366.

<sup>2</sup> *Life of Viscount Melbourne*, p. 472. See also 47 *Parl. Deb.* 3rd Series, cols.

5, 7, 9, 19.

<sup>3</sup> *Peel Papers*, II, p. 386.

<sup>4</sup> *Life of Lord John Russell*, II, p. 12; Greville, *Memoirs*, 2nd Series, III, pp. 342-4.

<sup>5</sup> *Ante*, pp. 150-1.

<sup>6</sup> *Later Correspondence of Lord John Russell*, I, p. 40.

precedent was not created until 1868, when Mr Disraeli, having appealed to the country in vain, decided with his usual realism that it was useless to meet Parliament again. The Queen and the Cabinet agreed with him. "The result of the appeal to the country", said the former, "is too evident to require its being proved by a vote in Parliament, and the Queen entirely agrees with Mr Disraeli and his followers in thinking that the most dignified course for them to pursue, as also the best for the public interests, was immediate resignation."<sup>1</sup>

Mr Gladstone in 1874 hesitated to follow suit. "It is Parliament, not the constituencies," he said, "that ought to dismiss the Government, and the proper function of the House of Commons cannot be taken away from it without diminishing somewhat its dignity and authority."<sup>2</sup> He told the Queen that to receive its sentence from Parliament was the course "most agreeable to usage, and to the rules of Parliamentary Government" and that any departure from it could only be justified upon exceptional grounds.<sup>3</sup> But some of his colleagues, as well as the Queen, thought differently. The Queen answered flatly that "whatever advantage there may be in adhering to usage and precedent, it is counterbalanced by the disadvantage of nearly three weeks' delay for the country and the public service".<sup>4</sup> Finally, Mr Gladstone agreed with his colleagues that his was an exceptional case—though indeed there was nothing to differentiate it from 1841—and the Government resigned. Lord Beaconsfield in 1880, Mr Gladstone in 1886, and Mr MacDonald in 1924, followed the example. Where the Government is defeated, and another party has a majority, there is every reason in favour of resignation and none for meeting Parliament. That the Government is to die is evident; it can do nothing in the interval; it is futile to draft a King's speech when nothing in it can be carried out; it is a waste of time for Parliament to debate a no-confidence amendment when the consequence is plain.

< The position is different when no party obtains a majority. Lord Salisbury in 1885 and 1892 and Mr Baldwin in 1923 decided to meet

<sup>1</sup> *Life of Gladstone*, II, pp. 252-3.

<sup>2</sup> *Ibid.* II, pp. 492-3.

<sup>3</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 316.

<sup>4</sup> *Ibid.* 2nd Series, II, p. 317.

Parliament, for in none of the cases was it clear that the Opposition parties would coalesce or support each other. In 1886, indeed, the Liberals deliberately did not vote on the general question of confidence, but supported an amendment for the "three acres and a cow" policy.<sup>1</sup> In 1892 the Liberals had a majority only if they were supported by the Irish, and a no-confidence amendment to the Address was moved by Mr Asquith. In 1923 it was not certain that the Liberals would support the Labour Party, and only the vote on a no-confidence amendment to the Address determined the question.

In 1929, however, Mr Baldwin resigned at once. His party was no longer the strongest party, as it had been in 1923. It was unlikely that it would secure Liberal support. Some took the view that the Government ought to meet Parliament. Mr Baldwin said: "I took the view, that whatever had been the constitutional position, under universal suffrage the situation had altered; that the people of this country had shown plainly that whether they wanted Hon. Members opposite or not, they certainly did not want me, and I was going to get out as soon as I could. My Colleagues agreed with me."<sup>2</sup>

It is a further result of the fact that the strength of the Government rests on the electorate that it can, if defeated in the House of Commons, appeal to the people by advising a dissolution of Parliament. It is a question of tactics whether it will resign or dissolve. Its resignation almost invariably involves a dissolution. It depends on the political temper of the moment whether it is likely to gain or lose if it allows its opponents to dissolve. Since elections are open and free, and Crown "patronage" or "influence" no longer exists, the Government in power has not the advantage which persists even in some democratic countries and which is evident in all countries where terrorism exists. The Government has no control over returning officers. It can in no way control the result of an election. It has only the weapons which the Opposition also possesses, the weapons of justification and criticism. A Government that is strong in its belief in its own opinion will not be

<sup>1</sup> For Lord Salisbury's decision to await defeat in Parliament, see *Letters of Queen Victoria*, 2nd Series, III, p. 707.

<sup>2</sup> 261 H.C.Deb. 5 s., 535 (1932).

satisfied until it has appealed to the people; a Government that is divided against itself will seize the opportunity of a Parliamentary defeat, as in 1885 and 1895, to resign.

It must not be thought, however, that a single defeat necessarily demands either resignation or dissolution. Such a result follows only where the defeat implies loss of confidence. Tactically, it is desirable for the Government not to accept defeat readily. For if a Government allows itself to be overridden it encourages independence in its members. It is the fear of defeat and the threat of dissolution that supply the most effective elements of the Government's power over its majority. Consequently, modern Governments tend to treat most questions as questions of confidence. Yet there are many examples of defeats that have been accepted.

Sir Robert Peel's Government was defeated in 1834, on an amendment to the Address. It did not resign then, but resigned on a subsequent defeat on an appropriation resolution.<sup>1</sup> From 1834 to March, 1840, the Whig Government was defeated fifty-eight times in the Commons and forty-nine times in the Lords.<sup>2</sup> In 1841 it was defeated on the sugar duties, but did not resign. Sir Robert Peel then moved "That Her Majesty's Ministers do not sufficiently possess the confidence of the House of Commons to enable them to carry through that House measures which they deem of essential importance to the public welfare, and that their continuance in office, under such circumstances, is at variance with the spirit of the Constitution." Lord John Russell replied that members could not be expected to approve of every measure in detail. But the Government was defeated by one vote and decided to dissolve. First, however, it took credits for six months, and cleared up the legislative programme.<sup>3</sup>

The Coalition Government was in 1853 defeated three times in one week.<sup>4</sup> Lord Rosebery's Government was defeated on a "snap vote" in 1894 but did not resign.<sup>5</sup> Mr Balfour's Government was defeated in

<sup>1</sup> *Lord Melbourne's Papers*, p. 264.

<sup>2</sup> 53 *Parl. Deb.* 3rd Series, col. 551. This statement was made by a Tory in the House of Lords, but was not contradicted by Lord Melbourne.

<sup>3</sup> 58 *Parl. Deb.* 3rd Series, cols. 805-1196.

<sup>4</sup> *Life of Disraeli*, 1, p. 1322.

<sup>5</sup> *Life of Lord Rosebery*, II, p. 445.

Committee of Supply on an Irish Question in 1905, but neither resigned nor dissolved Parliament.<sup>1</sup>

A minority Government is especially liable to defeat. In 1886 Lord Salisbury wrote to Lord Randolph Churchill suggesting that he should inform the House of Commons that

we will be responsible for the guidance of Parliament only on the questions which we ourselves submit to it. All questions submitted by independent members, unless they affect our executive action on the measures we have proposed, we shall treat as open questions, taking no collective responsibility for the decision of Parliament upon them... Open questions were much more common when I entered Parliament than they are now, but as we are entering again upon the period of precarious majorities the system will have to be resumed.<sup>2</sup>

But private members' motions no longer play the part in Parliamentary procedure which they played in 1886. The question now is not as to private members' proposals but as to the extent to which the Government can suffer defeat on its own proposals. In 1924 Mr MacDonald announced:

The Labour Government will go out if it is defeated upon substantial issues, issues of principle, issues which really matter. It will go out if the responsible leaders of either party or any party move a direct vote of no confidence, and carry that vote. But I propose to introduce my business, knowing that I am in a minority, accepting the responsibilities of a minority, and claiming the privileges that attach to those responsibilities. If the House on matters non-essential, matters of mere opinion, matters that do not strike at the root of the proposals that we make, and do not destroy fundamentally the general intentions of the Government in introducing legislation—if the House wish to vary our propositions, the House must take the responsibility for that variation—then a division on such amendments and questions as those will not be regarded as a vote of no confidence.<sup>3</sup>

The Government was in fact defeated ten times between January and August, 1924.<sup>4</sup> This statement was not, apparently, repeated in 1929.

<sup>1</sup> *Life of Sir Henry Campbell-Bannerman*, II, pp. 173-4.

<sup>2</sup> *Life of Lord Randolph Churchill*, II, p. 136.

<sup>3</sup> 169 H.C. Deb. 5 s., 749-50.

<sup>4</sup> Snowden, *Autobiography*, II, p. 680.

What the Government will treat as a matter of sufficient importance to demand resignation or dissolution is, primarily, a question for the Government. The Opposition can always test the opinion of the House by a vote of no-confidence. No Government since 1832 has failed to regard such a motion, if carried, as decisive. A House whose opinion was rejected has always at hand the ultimate remedy of the refusal of supply. A Government always finds time for a vote of censure upon itself; and, if it did not, there would again be available the sanction of refusal of supply. The Government of 1841 was defeated on a no-confidence amendment to the Address. That of 1846 resigned after a defeat on an Irish Coercion Bill. The Whig Government of 1851 was defeated on a franchise motion in a thin House and resigned, but continued in office when an alternative Government proved impossible. The Whig Government of 1852 resigned after a defeat on the Militia Bill. The Conservative Government of the same year failed to secure a majority at a general election and resigned after defeat on the Budget. The Coalition Government resigned in 1855 after a defeat on Roebuck's motion for an inquiry into the conduct of the Crimean War. Lord Palmerston's Government was defeated in 1857 on its China policy, but advised a dissolution and secured a majority. It was, however, defeated on a Conspiracy Bill in 1858 and resigned. The Conservative Government which succeeded it failed to obtain a majority at a general election and resigned after a no-confidence amendment to the Address. The Liberal Government of 1866 was defeated on the Reform Bill and resigned. The Conservative Government of 1868 was defeated on an Irish Church motion and advised a dissolution; being defeated at the general election it resigned without meeting Parliament. The Liberal Government was defeated in 1873 on the Irish University Bill and resigned, but continued in office on Mr Disraeli's refusal to form a Government. It was defeated at the general election of 1874 and resigned without meeting Parliament. The Liberal Government of 1885 was defeated on the Budget and resigned. The Conservative Government which followed was unable to secure a majority at the general election and was defeated on an amendment to the Address. The Liberal Government of 1886 was defeated on the Home Rule Bill and advised a dissolution; being defeated at the

general election it resigned without meeting Parliament. The Liberal Government of 1895 was defeated in supply on the cordite vote and resigned. The Conservative Government of 1924, having failed to secure a majority at a general election, was defeated on a no-confidence amendment to the Address. The Labour Government of 1924 was defeated on a motion on the Campbell case and advised a dissolution; being defeated at the general election it resigned without meeting Parliament.<sup>1</sup> It is significant that resignations and dissolutions due to the defeat of the Government in the House of Commons have been rare in recent years.<sup>2</sup>

Four factors really determine the attitude of a Government to a Parliamentary defeat. The first is its loss of prestige. A weak Government is a bad Government. Defeat is a sign of weakness which can be overcome only by resignation or dissolution. The second is the strength of its own cohesion. A Government on the verge of disintegration, as in 1885 and 1895, will seize an opportunity to resign. The third is the nature of the issue on which it has been defeated. It is ill-advised to risk a dissolution on a matter which can be made a point of attack on political platforms unless it feels that it has a good defence with a wide popular appeal. The fourth is the importance of the proposal or matter on which it was defeated. A defeat on an important part of the Budget, as in 1852 and 1885, is obviously too important to be passed over.<sup>3</sup> An amendment to the Address in answer to the King's speech is, in substance, a vote of no-confidence.<sup>4</sup> A definite statement that the Government would resign if a proposal is not accepted is a notice that the Government treats the motion as one of confidence, as in 1873.<sup>5</sup> In other cases, as in 1852 and 1858, the circumstances may suggest that the defeat is in substance a vote of censure.<sup>6</sup>

<sup>1</sup> See Appendix I, *post*, pp. 393-411.

<sup>2</sup> See *ante*, pp. 361-71.

<sup>3</sup> *Life of Gladstone*, II, p. 203; *Letters of Queen Victoria*, 2nd Series, III, p. 661.

<sup>4</sup> See Lord Salisbury's positive statement, *Letters of Queen Victoria*, 3rd Series, I, p. 22: "An amendment to the Address is one of the well-known forms of ejecting a Ministry."

<sup>5</sup> Guedalla, *The Queen and Mr Gladstone*, I, pp. 399-402.

<sup>6</sup> *Letters of Queen Victoria*, 1st Series, II, p. 444; *ibid.* 1st Series, III, p. 337.

§ 3. *Collective Responsibility in Practice.*

The defeat of a minister on any issue is a defeat of the Government. The proposals made by a minister, whether or not they have been approved by the Cabinet, are the proposals of the Government. An attack on a minister is an attack on the Government. This is the Parliamentary aspect of that collective responsibility which has been studied elsewhere.<sup>1</sup> Yet the principle must be accepted subject to qualifications. Though the Government accepts responsibility for a minister's proposal, there is nothing to prevent it from bowing to that "feeling of the House" to which experienced politicians are sensitive and withdrawing the proposal, as in December, 1935. If the minister feels that his credit has thereby been impaired, he will resign. Again, a Government does not accept responsibility for a personal mistake by a minister. Lord Ellenborough published in 1858 a despatch to the Viceroy of India which ought not to have been made public, and he resigned in anticipation of a Parliamentary vote of censure. The vote was moved against the Government, which did not attempt to defend the action, but merely excused it.<sup>2</sup> Lord Ellenborough "took upon himself the whole and sole responsibility for having authorised the publication of the despatch".<sup>3</sup>

In 1864 the House of Commons censured the Education Department for suppressing parts of the inspectors' reports. The Cabinet was prepared to support Mr Lowe, the Vice-President of the Council, but he insisted on resigning. He demanded an inquiry by a Select Committee, and when this exonerated him the vote was rescinded.<sup>4</sup> In 1865 the House of Commons resolved that there had been "a laxity of practice and a want of caution" in dealing with an appointment to the Leeds Bankruptcy Court. Lord Westbury who, as Lord Chancellor, was responsible, thereupon resigned.<sup>5</sup> In 1873 there were accounting irregularities in the practice of the Post Office which were not checked by the

<sup>1</sup> *Ante*, pp. 217-27.

<sup>2</sup> *Letters of Queen Victoria*, 1st Series, III, pp. 356-61.

<sup>3</sup> *Ibid.* III, p. 361.

<sup>4</sup> *Life and Letters of Viscount Sherburne*, II, p. 226.

<sup>5</sup> *Life of Lord Granville*, I, pp. 479 *et seq.*



Treasury. None of the ministers concerned had had their minds directed to the question, though the Postmaster-General was the accounting officer and was thus technically as well as ministerially responsible. Mr Gladstone effected a change of offices for the three ministers concerned.<sup>1</sup> In 1914 the Secretary of State for War resigned because he had allowed an "interpretation" to be added to a Cabinet memorandum on the duties of officers in Ulster.<sup>2</sup> In 1917 Mr Austen Chamberlain resigned because he considered himself to be ministerially responsible, as Secretary of State, for the inefficiency of the Government of India disclosed by the report of the Royal Commission on Mesopotamia. In 1922 Mr E. S. Montagu, as Secretary of State for India, permitted the Government of India to publish a telegram involving major policy without Cabinet sanction.<sup>3</sup> In 1935 Sir Samuel Hoare resigned when the Cabinet withdrew its sanction to the Italo-Ethiopian proposals. Some of these examples disclose a rather high sense of obligation in the ministers concerned. But they show, also, that the Government does not accept responsibility for an error of judgment or bad administration by one of its members. The process of Government compels a delegation of authority. The Cabinet must leave to each minister a substantial discretion as to what matters he will bring before it. If he makes a mistake, then he must accept the personal responsibility. On the other hand, a minister cannot hide behind the error of a subordinate. Within a department there must be substantial delegation of power. But the most essential characteristic of the Civil Service is the responsibility of the minister for every act done in his department. In practice, the minister can hardly avoid saying that the mistake was that of a subordinate, but Parliament censures the minister and not the subordinate.

#### § 4. *The Function of the Opposition.*

Attacks upon the Government and upon individual ministers are the function of the Opposition. The duty of the Opposition is to oppose. It adopts Sir Toby's advice, "So soon as ever thou seest him, draw; and,

<sup>1</sup> *Life of Gladstone*, II, pp. 460-61; Epitome of the Reports from the Select Committee of Public Accounts, 1926, pp. 36-46.

<sup>2</sup> *Life of Lord Oxford and Asquith*, II, p. 46.

<sup>3</sup> *Life of Lord Curzon*, III, pp. 285-6.

as thou drawest, swear horrible." That duty is the major check which the Constitution provides upon corruption and defective administration. It is, too, the means by which individual injustices are prevented. The House of Commons is at its best when it debates those individual acts of oppression or bad faith which can never completely be overcome in a system of Government which places responsibility in such minor officials as police officers. It is the public duty of the Opposition to raise such questions. It is a duty hardly less important than that of Government. "His Majesty's Opposition" is second in importance to "His Majesty's Government". The apparent absurdity that the Opposition asks for Parliamentary time to be set aside by the Government in order that the Opposition may censure the Government, or that the Government is asked to move a vote of supplies for the Ministry of Labour in order that the Opposition may attack the Minister of Labour is not an absurdity at all. It is the recognition by both sides of the House that the Government governs openly and honestly and that it is prepared to meet criticism not by secret police and concentration camps but by rational argument.

In fact, opposition and government are carried on alike by agreement. The minority agrees that the majority must govern, and the majority agrees that the minority should criticise. The process of Parliamentary government would break down if there were not mutual forbearance. The most important elements in Parliamentary procedure are the discussions "behind the Speaker's Chair" or "through the usual channels". The Prime Minister meets the convenience of the leader of the Opposition and the leader of the Opposition meets the convenience of the Government. The respective Whips, in consultation with the respective leaders, settle the subjects to be debated, the time to be allowed and, sometimes, the information to be provided and the line of attack. The Government agrees that a vote of censure be moved on Monday provided that a Bill be given a second reading on Tuesday. The Opposition assents to its inevitable defeat at 7.30 p.m. in order that it may move a resolution for the rest of the evening and suffer its inevitable defeat at 11 p.m.

Sometimes, indeed, it agrees not to oppose. This is particularly true

of foreign affairs. For the enmity within is as nothing compared with the enmity without. The suggestion that the nation is divided gives encouragement to enemies abroad. From the outbreak of war in 1914 until the formation of the Coalition Government in 1915 the Opposition did not oppose in public but made representations in private. The Government in its turn communicated paraphrases of secret cables—paraphrases in case the documents should fall into enemy hands and so disclose the cyphers—to the Opposition “Shadow Cabinet”.<sup>1</sup> Mr Austen Chamberlain, as the former Conservative Chancellor of the Exchequer, assisted the Liberal Chancellor of the Exchequer on the financial questions of the war.<sup>2</sup> Agreement was especially necessary where secret promises were made which might have to be carried out by a subsequent Government, as with the promise to allot Constantinople to Russia.<sup>3</sup>

Nor is this process necessarily limited to foreign affairs. It appears that the Labour Government of 1931 consulted the Opposition on the financial crisis of that year. Where there is opposition between the two Houses, compromise is the obvious solution, as on the Irish Church Bill of 1868–9,<sup>4</sup> the Education Bill of 1870,<sup>5</sup> the Ballot Bill of 1872,<sup>6</sup> the Franchise Bill of 1874,<sup>7</sup> the Education Bill of 1906,<sup>8</sup> and the Parliament Bill of 1910–11.<sup>9</sup> The influence of the Sovereign can obviously be used to secure the first steps towards consultation.<sup>10</sup>

Further, agreement may be made with the Opposition to secure the settlement of a question which has so long divided political parties that an agreed solution becomes necessary. Lord Morley pointed out that the repeal of the Test Act in 1828, Catholic Emancipation in 1829, the

<sup>1</sup> Beaverbrook, *Politicians and the War*, I, p. 51.

<sup>2</sup> Lloyd George, *War Memoirs*, I, pp. 105–6, 119.

<sup>3</sup> Beaverbrook, *Politicians and the War*, I, p. 59; Churchill, *World Crisis*, II, pp. 198–9.

<sup>4</sup> See *ante*, pp. 284–5.

<sup>5</sup> *Life of Lord Ripon*, I, pp. 226–8.

<sup>6</sup> *Letters of Queen Victoria*, 2nd Series, II, p. 223.

<sup>7</sup> *Life of Gladstone*, III, pp. 135 *et seq.*

<sup>8</sup> *Life of Sir Henry Campbell-Bannerman*, II, pp. 307–11; *Life of Lord Lansdowne*, p. 356; *Life of Randall Davidson*, I, pp. 726–9.

<sup>9</sup> *Life of Lord Oxford and Asquith*, I, pp. 285–93.

<sup>10</sup> See *ante*, pp. 284–9.

repeal of the Corn Laws in 1846, and the extension of the franchise in 1867, were secured by party co-operation,<sup>1</sup> though these are example of co-operation on the floor of the House rather than "behind the Speaker's Chair". Mr Gladstone's hope that the Conservatives would deal with Home Rule in 1886 in the same way was doomed to disappointment. The Liberals were compelled to wait thirty-five years for Conservative conversion. A more unusual arrangement was that whereby Lord Palmerston governed the country with the secret acquiescence of Lord Derby from 1860 to 1866 "en société anonyme", as it has been called.<sup>2</sup> It was unusual because Lord Derby did not desire to form a Government and Lord Palmerston was the main bulwark against Radicalism. Even so, it had to be kept secret for fear of "mutiny in Lord Derby's camp".<sup>3</sup> Unusual, also, was the agreement between the Government, the Opposition and the Speaker to bring to an end the famous long sitting of January 31st-February 2nd, 1881, and the agreement between Government and Opposition for proposals to reduce Irish obstruction.<sup>4</sup>

Sometimes, the attempt of the Government to secure collaboration does not succeed. The Education Bill of 1906 did not pass. The Constitutional Conference of 1910 could not reach agreement. The attempts of Mr Disraeli to minimise opposition to his Eastern policy in 1877 did not succeed.<sup>5</sup> Sir Henry Campbell-Bannerman refused to assist Mr Joseph Chamberlain in his attempts to "bluff" President Kruger by waving a big stick.<sup>6</sup> But a Government that does not make outrageous demands will not be met by outrageous demands. Where there is a desire to compromise on one side, it will usually be met by a similar desire on the other. Where no acceptance of policy is involved, the collaboration of Opposition leaders can readily be secured. Mr Balfour assisted the Committee of Imperial Defence in 1908.<sup>7</sup> The Labour Government of

<sup>1</sup> *Life of Gladstone*, III, p. 257.

<sup>2</sup> G. Saintsbury, *Lord Derby*, ch. VIII.

<sup>3</sup> Guedalla, *Gladstone and Palmerston*, p. 150.

<sup>4</sup> *Letters of Queen Victoria*, 2nd Series, II, pp. 532, 534, 538.

<sup>5</sup> *Ibid.* 2nd Series, III, pp. 187-95.

<sup>6</sup> *Life of Sir Henry Campbell-Bannerman*, I, pp. 233-5. (It is immaterial whether he in fact did or did not use the word "Bluff".)

<sup>7</sup> *Life of Lord Oxford and Asquith*, I, pp. 243-7; *Esher Papers*, II, pp. 316-17, 364.

1929 to 1931 similarly invited Opposition leaders to take part in some aspects of the Committee's work.<sup>1</sup> Discussions by a minority Government with the third party are not of the same character, but they help to make the machine work even under difficulties, as in 1886-92 and 1929-31.<sup>2</sup>

#### § 5. *The Electors' Mandate.*

In the last resort, a Government which has a majority in the House of Commons and does not fear the House of Lords can pass through Parliament any proposals which it considers politic to put forward. But this is subject to the doctrine of the "mandate". This doctrine appears to have been invented by the Conservatives to justify the opposition of the House of Lords to Liberal measures.<sup>3</sup> It is, however, based upon an important principle. A Government exists only because it has secured a majority at an election, or is likely to secure such a majority when an election takes place. But it secures that majority by appealing to the electorate to support a policy. The electorate expects that that policy will be carried to fruition. It does not expect that radical changes will be made unless they were part of the party policy or are the necessary consequences of that policy. The Government must, of course, meet emergencies if and when they arise, but, emergencies apart, major developments of policy should not be entered upon without that approval of the electorate which is secured by the return of a party to power.

The principle was well put by Lord Hartington in opposing the Home Rule Bill in 1886.

Although no principle of a "mandate" may exist, there are certain limits which Parliament is morally bound to observe, and beyond which Parliament has, morally, not the right to go in its relations with the constituents. The constituencies of Great Britain<sup>4</sup> are the source of the power at all events of this branch of Parliament, and I maintain that, in the absence of an emergency that could not be foreseen, the House of

<sup>1</sup> *Arte*, p. 242.

<sup>2</sup> Snowden, *Autobiography*, II, pp. 879-89.

<sup>3</sup> Cf. *Life of Robert, Marquis of Salisbury*, II, pp. 23-8.

<sup>4</sup> Unionists affected to ignore the opinion of Ireland on its own destiny.

Commons has no right to initiate legislation, especially immediately upon its first meeting, of which the constituencies were not informed, and of which the constituencies might have been informed, and of which if they had been informed, there is, at all events, the very greatest doubt as to what their decision might be.<sup>1</sup>

Whether a mandate has been given, and of what a mandate consists, are matter for argument. Lord Salisbury announced before the election of 1892 that the Opposition had put so many matters before the electors that he would not regard a Liberal majority as giving a mandate for Home Rule.<sup>2</sup> Lord Hartington moved the rejection of the Home Rule Bill in the following year on the ground that in a case so serious not only the principle but the form of the measure should be before the country before the election before a mandate could be said to have been given.<sup>3</sup> Other Unionists pointed out that if the electors of Ireland were not counted, the Government had not a mandate at all. Similarly the Unionists demanded that the Government receive a mandate for the land taxes of 1909. When that had been given, they demanded that it receive a mandate for the Parliament Bill; and, because, having asked for a mandate for that purpose, the Liberals could not be said to have obtained a mandate for Home Rule, they demanded another election in 1913.<sup>4</sup> In short, the doctrine of the mandate is part of the political cant. It is a stick used by the Opposition to beat the Government. It could hardly be said in 1918 that Mr Lloyd George had a mandate for the extension of the suffrage, especially to women. In 1921 he had no mandate for the settlement of the Irish question which had dominated politics from 1885 to 1914. Mr Baldwin in 1928 had no mandate for giving women an equal franchise with men.

The doctrine is, however, of importance. Though it must necessarily be vague and its operation a matter of dispute, it is recognised to exist. Mr Chamberlain raised the tariff question in 1903 in order that a mandate might be obtained at the next election.<sup>5</sup> Mr Baldwin dissolved

<sup>1</sup> *Life of the Duke of Devonshire*, II, pp. 141-2.

<sup>2</sup> *Life of Robert, Marquis of Salisbury*, IV, p. 403.

<sup>3</sup> *Life of the Duke of Devonshire*, II, p. 254.

<sup>4</sup> See Appendix IV, *post*, pp. 436-43.

<sup>5</sup> *Life of the Duke of Devonshire*, II, p. 303.

Parliament in 1923 because he wanted a mandate for tariff reform.<sup>1</sup> He did not introduce a general tariff between 1924 and 1929 because, as he admitted, he had no mandate for it. The National Government was able to introduce it in 1932 because, at least as the Conservatives insisted, it had secured a "doctor's mandate" to do what seemed best, after inquiry, to redress something called "the adverse balance of trade". The National Government asked for a renewal of its mandate in 1935 because, as it alleged, the causes which had called the First National Government into existence had not disappeared. Because it is a stick to beat the Government it is important; for its plausibility is obvious. It is a useful argument that the Government has used its majority to effect changes to which the electorate has not been asked to consent. It suggests that the Government cannot be trusted and ought to be turned out. Honesty apart, it is politic for the Government to consider whether or not the argument can, in future, be used against it with effect.

\* \* \* \* \*

Cromwell said that when he forcibly dissolved the Long Parliament "not a dog barked". Government can be carried on quite successfully without a Parliament. It is indeed a dilatory and inefficient talking machine. Yet speed and efficiency are not the only requirements of government. Justice is the supreme political virtue. Nor is ability to act first and think afterwards, if at all, a quality which commends itself. The British governmental machine is, in spite of its many defects, one of the most efficient, if not the most efficient, constitutional structures of the world. It is reasonably efficient because it can be criticised. It is reasonably just because its actions are proclaimed to the people by those who have no cause to praise it. It is, in short, a good system because it rests upon Parliament and, through Parliament, upon the willing consent of those who are governed. The dogs bark *in* Parliament; if there were no Parliament, they might bite.

<sup>1</sup> "My Ministry recently laid before the country proposals which, in their judgment, would have contributed substantially to a solution of this problem [of Unemployment]...but these proposals were not accepted by the country." (The King's Speech, January 15th, 1924.) 169 H.C.Deb. 5 s., 79.

## APPENDIX I

# Governments since 1835

### 1. *Whig Government, 1835-1841*

Prime Minister: Viscount Melbourne.

Leader of the House of Commons: Lord John Russell.

The Government was formed in 1835 after the defeat of Sir Robert Peel's Government at the general election. It was maintained in office by Queen Victoria. It resigned in 1839 because it secured an inadequate majority on the Jamaica Bill. Melbourne advised the Queen to send for the Duke of Wellington; but the latter advised her to send for Sir Robert Peel. Peel accepted the commission but resigned it owing to the "Bedchamber Question". The Whig Cabinet accepted responsibility for the Queen's refusal to change her Ladies, and continued in office, without an effective majority, until 1841. Being then defeated on a no-confidence resolution, it advised a dissolution. The Conservatives secured a majority, but the Government met Parliament, was defeated on amendments to the Address in both Houses, and resigned.

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### 2. *Conservative Government, 1841-1846*

Prime Minister: Sir Robert Peel.

On the defeat of his Government, Lord Melbourne advised the Queen to send for Sir Robert Peel. Negotiations between the Prince Consort and Peel, through the former's secretary, had removed the difficulty of the Ladies. Accordingly, Peel formed his Government and remained in office with a majority until 1845. In 1845 the Government resigned owing to differences of opinion about the Corn Laws. In informal discussions with the Queen, Peel suggested that she should



send for Lord John Russell. Russell occupied a week in discussing with his friends and trying to secure a definite promise of support from Sir Robert Peel. Finally he refused to take office, on the ground that Lord Grey would not accept office if Lord Palmerston was at the Foreign Office, and the support of both was necessary. Peel therefore continued in office and repealed the Corn Laws, but was defeated on a Coercion Bill in 1846 by a combination of Whigs and Protectionists, and resigned.

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For the crisis of 1845, see *Letters of Queen Victoria*, 1st Series, II, pp. 55-74; *Peel Papers*, III, pp. 229-55 and 283-5; *Memoirs of Sir Robert Peel*, II, pp. 97-235; *Life of Lord John Russell*, I, pp. 409-19; *Later Correspondence of Lord John Russell*, I, pp. 87-99.

### 3. *Whig Government, 1846-1852*

Prime Minister: Lord John Russell.

Peel was defeated in 1846 by the Protectionists supporting the Whigs. The Queen sent for Lord John Russell who, after seeing Peel, undertook to form a Government, though in a minority in the House of Commons. It remained without an effective majority even after the general election of 1847, but could rely on Peelite support. In 1851 a Franchise motion which was opposed by the Government was passed in the House of Commons, and the Government resigned. In informal discussion, it was agreed that the Queen ought to send for Lord Stanley, as the leader of the Protectionist Opposition. The Protectionists had not, however, been responsible for the defeat, and Lord Stanley considered that it ought first to be seen whether some other Government was not possible. He suggested a coalition of Whigs and Peelites; but if it was clear that no other Government could be formed, he would accept the obligation of forming a Protectionist Government. The Queen then sent for Lord John Russell and Sir James Graham (as a prominent Peelite) to put the case before them. The Duke of Wellington, Lord Aberdeen, and Russell and Graham again were consulted in ensuing discussions. Ultimately, the Peelites refused to serve with Russell, and Lord Stanley was again asked to form a Government. Stanley attempted to obtain Peelite support; and, this failing, a Protectionist party meeting decided that he could not take office owing to

the refusal of some of his prominent supporters to join a Government. Lord John Russell was then sent for and he agreed to resume office. He being unable to obtain Peelite support, the Whig Government was restored. After the dismissal of Lord Palmerston from the Foreign Office, however, the Government was defeated in 1852 on the Militia Bill, and resigned.

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For the crisis of 1851, see *Letters of Queen Victoria*, 1st Series, II, pp. 345-81; *Life of Lord John Russell*, II, pp. 123-8; *Life of Sir James Graham*, II, pp. 126-31; *Life of Disraeli*, I, pp. 1101-12.

## 4. Conservative Government, 1852

Prime Minister: Earl of Derby.

Leader of the House of Commons: Mr Disraeli.

The events of 1851 had indicated that on the defeat of the Whig Government the Queen should send for Lord Derby (formerly Lord Stanley). Lord Derby accepted the Commission, though he had no majority in the House of Commons. After vainly seeking the collaboration of Lord Palmerston he formed a Conservative Government consisting of persons nearly all of whom had had no previous ministerial experience (the "who-who" Ministry). At the general election five months later the Government's strength in the House of Commons was increased, and theirs was by far the largest party. Opposition, however, brought together the Opposition groups and the Government was defeated on the Budget, and resigned.

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## 5. Coalition Government, 1852-1855

Prime Minister: Earl of Aberdeen.

Leader of the House of Commons: Lord John Russell.

The Whigs and Peelites in opposition had come to an agreement to serve under the Earl of Aberdeen. This information becoming known to Lord Derby, he informed the Queen. He advised the Queen, however,

to send for Lord Lansdowne, though the Prince Consort pointed out that it did not lie with him to give advice. The Queen sent for both Lansdowne and Aberdeen but Lansdowne was unable to come, and Aberdeen had consulted him before seeing the Queen and had come to an understanding with him. The Queen commissioned Lord Aberdeen to form a Government, and he accepted. The allocation of offices between Whigs and Peelites, and the position of Lord John Russell as the Whig leader, caused difficulties which were overcome. In spite of the testimony of the Duke of Argyll, the coalition was not a success. On the resignation of Lord John Russell in 1855, owing to his alleged inability to oppose Roebuck's motion for a Select Committee on the Crimean War, the Government decided to resign, but on the Queen's insistence decided to meet the motion. Being defeated, it then resigned.

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6. *Liberal Government, 1855-1858*

Prime Minister: Viscount Palmerston.

On the resignation of Lord Aberdeen's Government, informal discussions took place, at which it was agreed that the Queen should send for Lord Derby. He refused unless he could get support. Failing to get support from any Peelites or from Lord Palmerston, he refused office. The Queen then saw Lord Lansdowne as an "elder statesman". He refused to consider becoming Prime Minister, and suggested Lord Clarendon. This suggestion being scouted by the Queen, he agreed to see Lord Palmerston, the leading Peelites, and Lord John Russell. As a result of these discussions, he suggested that the Queen should send for Lord John Russell, though he did not believe that Russell could form a Government. The Queen accepted this suggestion, and Lord John Russell thought that he could form a Government. On making the attempt, he thought differently. The Queen then saw Lord Palmerston and Lord Clarendon and, subsequently, Lord Lansdowne again. As a result of these discussions, she asked Lord Palmerston if he could form a Government. He was able to reform the coalition but, when it was decided to accept Roebuck's motion, three leading Peelites resigned. The Government thus became almost wholly Liberal and brought the

war to a conclusion. For a time, there appeared to be some prospect of the reabsorption of the Peelites in the Conservative Party, and the Government was defeated in 1857 on its China policy. It advised the Queen to dissolve Parliament, and was returned with a triumphant majority. It was, nevertheless, defeated on the (Orsini) Conspiracy Bill in 1858, and resigned.

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#### 7. Conservative Government, 1858-1859

Prime Minister: Earl of Derby.

Leader of the House of Commons: Mr Disraeli.

On the resignation of Lord Palmerston, the Queen sent for Lord Derby, who asked for time for consideration, seeing that (as he said with some exaggeration) he had a majority of two to one against him in the House of Commons. The Prince Consort saw Lord Clarendon, and, as a result, came to the conclusion that Palmerston's resignation was to be taken seriously. Accordingly, the Queen asked Derby to form a Government. He approached Lord Grey and Mr Gladstone, but they refused to join. He therefore formed a wholly Conservative Government. By adroit management in the House of Commons, the Government continued until the spring of 1859, when it was defeated on the Reform Bill and advised a dissolution. As a result of the election the Conservative force in the House of Commons was increased, but not by enough to give the Government a clear majority over a united Opposition. As in 1852, Opposition created union, and attempts by the Government to take in Palmerston or Gladstone were unsuccessful. An agreed amendment to the Address was proposed and carried, and the Government resigned.

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8. *Liberal Government, 1859-1865*

Prime Minister: Viscount Palmerston.

Lord Palmerston and Lord John Russell had agreed, before the defeat of Lord Derby's Government, that if either of them was sent for by the Queen, the other would serve under him. The Queen had, however, already informed Lord Granville that she regarded him as the leader of the Liberal Party. When Derby resigned, therefore, she asked Granville to form a Government. He replied that he regarded either Lord Palmerston or Lord John Russell as the prospective Prime Minister. The Queen replied that it was invidious to choose between them, that each led a section only of the Liberal Party, and that Granville had been selected as the leader of the Party in the House of Lords. Granville then accepted the task of making the attempt. Lord Palmerston was willing to serve under Lord Granville, but Lord John Russell was not willing, and Granville therefore declined the post. The Queen thereupon commissioned Lord Palmerston to form a Government. He was able to secure the adhesion of Lord John Russell and Mr Gladstone, and so created a united Liberal Party. The Government continued in office until the death of Lord Palmerston in 1865.

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9. *Liberal Government, 1865-1866*

Prime Minister: Earl Russell.

Leader of the House of Commons: Mr Gladstone.

On the death of Lord Palmerston, Earl Russell (formerly Lord John Russell) was appointed Prime Minister and reformed the Government with a considerable reshuffling of offices. It was, however, defeated in the following year on the Reform Bill, Mr Lowe leading a section of Liberals (known as the "Cave of Abdullam") to vote against the Government, and the Government resigned.

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10. *Conservative Government, 1866-1868*

Prime Minister: Earl of Derby.

Leader of the House of Commons: Mr Disraeli.

On the resignation of Earl Russell's Government, the Queen urged them to continue. After reconsideration, however, they decided upon resignation, and the Queen sent for Lord Derby. Since there had recently been a general election at which the Liberals had obtained a majority, his position was again difficult. A party meeting agreed that he should form a Government if he could find sufficient support, and overtures were made to Lord Clarendon, the Duke of Somerset, and some of the Adullamite leaders, but without success. Derby then formed a wholly Conservative Government. This remained in office, though in a minority, until 1868, and even passed the second Reform Act. Derby resigned, owing to ill-health, in 1868.

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11. *Conservative Government, 1868*

Prime Minister: Mr Disraeli.

On his retirement, Lord Derby advised the Queen to send for Mr Disraeli. This was done, and Disraeli formed a Government differing but little from that of Lord Derby. The Government was, however, defeated within a couple of months on a motion by Mr Gladstone on the Irish Church. Disraeli, with the Queen's strong support, refused to resign, but decided to expedite the making of the new register of electors and to appeal to the country when that was done. At the general election six months later, the Government was decisively defeated, and it then resigned without meeting Parliament.

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12. *Liberal Government, 1868-1874*

Prime Minister: Mr Gladstone.

On the resignation of Mr Disraeli's Government, the Queen passed over Lord Russell and sent for Mr Gladstone, who formed a Government. In 1873 it was defeated on the Irish University Bill, and resigned. The Queen sent for Mr Disraeli, who was prepared to take office, but not with the then House of Commons; i.e. he wanted Gladstone to dissolve, and would be prepared to take office if the Conservatives obtained a majority. The Liberal Government therefore continued in office until it was defeated at the general election in 1874, when it resigned without meeting Parliament.

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13. *Conservative Government, 1874-1880*

Prime Minister: Mr Disraeli (raised to the peerage as Earl of Beaconsfield while in office).

On the resignation of the Liberal Government, the Queen sent for Mr Disraeli, who made no difficulty about forming a Government. No essential change was made when the Prime Minister became Earl of Beaconsfield in 1876, and the Government remained in office until, being defeated at the general election of 1880, it resigned without meeting Parliament.

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14. *Liberal Government, 1880-1885*

Prime Minister: Mr Gladstone.

The choice of a successor to the Earl of Beaconsfield was by no means easy. Mr Gladstone had retired from the leadership of the Liberal Party after its defeat in 1874. In accordance with the usual practice he

had not been replaced; but the Marquis of Hartington had led the Opposition in the House of Commons and Earl Granville in the House of Lords. Lord Beaconsfield, the Prince of Wales, and others, advised the Queen to send for Lord Hartington, and this was her first step. But the lead in the attack on Lord Beaconsfield had in fact been taken by Mr Gladstone, both in the House of Commons and in the constituencies. The election was viewed in the constituencies as a personal duel between Beaconsfield and Gladstone. Hartington and Granville agreed that Gladstone must become Prime Minister, and so informed the Queen. Nevertheless, Hartington agreed to form a Government if Gladstone would consent to serve. This Gladstone refused to do, whereupon the Queen, on Hartington's advice, sent for Mr Gladstone, who formed a Government. There were many attendant personal difficulties, not only between the Queen and the new Prime Minister, but also between the Prime Minister and the Radical section of his party.

The Government was defeated on the Budget in 1885. An immediate dissolution was not possible, since the Redistribution Bill consequent upon the third Reform Act was not yet through Parliament. The Government therefore resigned.

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#### 15. *Conservative Government, 1885-1886*

Prime Minister: Marquis of Salisbury.

Leader of the House of Commons: Sir Michael Hicks Beach.

Since the death of the Earl of Beaconsfield there had been no leader of the Conservative Party. The Marquis of Salisbury led the party in the House of Lords, and Sir Stafford Northcote in the House of Commons. Theoretically, therefore, the Queen had a choice between them. But in effect the leadership had been vested in Lord Salisbury, and on the resignation of Gladstone's Government she entrusted him with the task of forming a Government. Salisbury considered that the Government ought not to have resigned. He asked for pledges of support from the Liberal Party while the steps preliminary to a dissolution were being taken. At first Gladstone refused, and Salisbury asked the Queen to



make a formal statement in writing; this the Queen, on Sir Henry Ponsonby's advice, refused to do. Ultimately a formula was agreed between the two leaders, and Lord Salisbury formed a Government. At the ensuing general election, the Conservatives did not secure a majority. But as it was by no means clear that the Liberals could form a Government with a majority, owing to internal dissensions, the Government met Parliament and was defeated on a "three acres and a cow" amendment to the Address, whereupon the Government resigned.

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16. *Liberal Government*, 1886

Prime Minister: Mr Gladstone.

The defeat of Mr Gladstone's second Government was due to serious differences of opinion on the subject of the Government of Ireland, though the actual occasion was a defeat on the Budget. The general election of 1885 did not solve the difficulties, and though the great body of the party supported the amendment which compelled Lord Salisbury to resign, they did so primarily because it had nothing to do with Ireland. The formation of a Liberal Government was therefore attended with considerable difficulties. The Queen's views by this time were in fundamental opposition to Gladstone's policies. Before Lord Salisbury's resignation, she communicated with Mr Goschen with the intention of persuading the Whigs not to join with Mr Gladstone in turning out the Government. Mr Goschen, Lord Hartington and Sir Henry James in fact voted with the Government on the "three acres and a cow" amendment. On the resignation of Lord Salisbury, the Queen, on Lord Salisbury's formal advice, sent for Mr Goschen. He asked leave not to obey the command, and Sir Henry Ponsonby saw him on the Queen's behalf. Mr Goschen advised the Queen to send for Mr Gladstone, as Lord Salisbury had already done. Mr Gladstone accepted, but was unable to secure the support of the Whigs, and obtained Mr Joseph Chamberlain's support only until the Irish policy was declared. The defection of these leaders and their supporters left the Government without a majority, and it was defeated on the Home Rule Bill. Parlia-

ment was dissolved, but an anti-Home Rule majority was returned, and the Government resigned without meeting Parliament.

## BIBLIOGRAPHY

For the formation of Mr Gladstone's third Government, see *Letters of Queen Victoria*, 2nd Series, III, pp. 706-18; 3rd Series, I, pp. 5-46; *Life of Robert, Marquis of Salisbury*, III, pp. 272-92; *Life of Gladstone*, III, pp. 277-97; *Life of Lord Goschen*, I, pp. 312-21; II, pp. 1-24; *Life of Lord Randolph Churchill*, II, pp. 1-47.

17. *Conservative Government, 1886-1892*

Prime Minister: Marquis of Salisbury.

Leaders of the House of Commons: Lord Randolph Churchill (1886); Mr W. H. Smith (1886-1892).

On the resignation of Mr Gladstone's third Government, the Queen asked Mr Goschen if she should send for Lord Salisbury. His answer was in the affirmative, and Lord Salisbury formed his second Government. There was no Conservative majority, but the Government had an effective majority so long as it could rely on the support of the Liberal-Unionists. Lord Salisbury tried to form a coalition with the Liberal-Unionists, but failed, though Mr Goschen became Chancellor of the Exchequer on the resignation of Lord Randolph Churchill at the end of 1886. The Government had no difficulty in maintaining itself in office so long as the Parliament lasted, but at the general election of 1892 the Liberals gained enough votes to be able to out-vote the Government whenever they could secure the support of the Irish Nationalist Party. The Government met Parliament, but was defeated on a no-confidence amendment to the Address, and resigned.

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For the formation of Lord Salisbury's second Government, see *Letters of Queen Victoria*, 3rd Series, I, pp. 161-71; *Life of Robert, Marquis of Salisbury*, III, pp. 307-12; *Life of Lord Goschen*, II, pp. 81-96; *Life of the Duke of Devonshire*, II, pp. 162-74; *Life of Lord Randolph Churchill*, II, pp. 116-27.

18. *Liberal Government, 1892-1894*

Prime Minister: Mr Gladstone.

Before the election of 1892 the Queen had decided to send for Lord Rosebery in the event of a Liberal victory. But Sir Henry Ponsonby went round collecting views, and the Queen was convinced that she had

no alternative but to send for Mr Gladstone. Mr Gladstone's fourth Government remained in office until his personal resignation in 1894, though the strength of the Liberal Party in the House of Commons was less than the combined Unionist Opposition.

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For the formation of Mr Gladstone's fourth Government, see *Letters of Queen Victoria*, 3rd Series, II, pp. 103-46; *Life of Gladstone*, III, pp. 490-95; Guedalla, *The Queen and Mr Gladstone*, II, pp. 436-40; *Life of Lord Rosebery*, II, pp. 399-403.

19. *Liberal Government, 1894-1895*

Prime Minister: Earl of Rosebery.

Leader of the House of Commons: Sir William Harcourt.

Mr Gladstone's resignation was stated to be due to ill-health, but was in fact due to differences of opinion as to the estimates. He was not asked formally to give his opinion as to his successor, and he refused to answer informal questions by Sir Henry Ponsonby except at the Queen's request. He told Lord Acton that, if asked, he would advise her to send for Lord Kimberley, but later he told Mr Morley that he would advise her to send for Lord Spencer. In fact, however, the choice lay between Lord Rosebery and Sir William Harcourt. Sir Henry Ponsonby suggested the former, and it was clear that Rosebery was more likely to keep the party together than was Sir William Harcourt. Accordingly, the Queen sent for Lord Rosebery, who continued Mr Gladstone's Government without much alteration. He found leadership no easy matter, and the Cabinet seized the opportunity of a defeat on the cordite vote to resign in 1895.

## BIBLIOGRAPHY

For the formation of Lord Rosebery's Government, see *Letters of Queen Victoria*, 3rd Series, II, pp. 364-77; *Life of Gladstone*, III, pp. 507-16; *Life of Lord Rosebery*, II, pp. 437-44; *Life of Sir William Harcourt*, II, pp. 258-76; Morley, *Recollections*, II, pp. 11-16; Lord Gladstone, *After Thirty Years*, pp. 342-6.

20. *Unionist Government, 1895-1902*

Prime Minister: Marquis of Salisbury.

Leader of the House of Commons: Mr Balfour.

Lord Salisbury considered that the Liberal Government ought to have advised a dissolution. Nevertheless, he accepted office and formed a Government, which included the Liberal Unionist leaders. He advised

a dissolution almost at once, and secured a substantial majority. It was further increased at the "Khaki" election of 1900, and only Lord Salisbury's ill-health brought his Government to an end, in 1902.

## BIBLIOGRAPHY

For the formation of Lord Salisbury's third Government, see *Letters of Queen Victoria*, 3rd Series, II, pp. 321-331; *Life of the Duke of Devonshire*, II, pp. 216-63.

21. *Unionist Government, 1902-1905*

Prime Minister: Mr Balfour.

On the resignation of Lord Salisbury the King, apparently on his own initiative, sent for Mr Balfour, who continued Lord Salisbury's Government without substantial change. It was gradually weakened by internal dissensions and a change in public opinion. A defeat on the Irish Land Bill in July, 1905, was not followed by resignation or dissolution, but the Government suddenly resigned in December of that year.

## BIBLIOGRAPHY

For the formation of Mr Balfour's Government, see Lee, *King Edward VII*, II, pp. 158-60; *Life of the Duke of Devonshire*, II, pp. 279-80.

For the discussions on the defeat of 1905, see *Esher Papers*, II, pp. 91-2.

22. *Liberal Government, 1905-1908*

Prime Minister: Sir Henry Campbell-Bannerman.

The weakness of Mr Balfour's Government had made it clear in 1905 that a change of Government could not be long delayed. Sir Henry Campbell-Bannerman had been leader of the Liberal Opposition in the House of Commons since the resignation of Sir William Harcourt in 1899. The split in the Party between the "Pro-Boers" and the "Liberal Imperialists" had, however, made his leadership little more than nominal so far as some of the important members of the Party were concerned. Nevertheless, Mr Balfour in 1904 expressed the view to Lord Esher (which was doubtless passed on to the King) that Campbell-Bannerman should be sent for. Lord Rosebery expressed the same view in conversation with Lord Knollys. The King came to the same conclusion in 1905. On his resignation, Mr Balfour provided the King with information on the papers of 1873-4, and Lord Esher wrote a memorandum

based on the precedents of 1880 and 1895. The King sent for Campbell-Bannerman, who considered the question of refusing so as to compel Mr Balfour to advise a dissolution. Finally, however, he accepted; and after some difficulties with the Liberal Imperialists formed a Government which obtained a majority at the ensuing general election and lasted until his resignation on the ground of ill-health in 1908.

## BIBLIOGRAPHY

For the formation of the Liberal Government see Lee, *King Edward VII*, II, pp. 441-3; *Esher Papers*, II, pp. 56, 78, 119, 123; *Life of Sir Henry Campbell-Bannerman*, II, pp. 188-94; *Life of Lord Ripon*, II, pp. 272-7.

23. *Liberal Government, 1908-1915*

Prime Minister: Mr Asquith.

The illness of Campbell-Bannerman made discussion as to his successor necessary in 1907. The King saw Mr Asquith in 1908 before the Prime Minister resigned, and expressed his intention of appointing him to the office. Mr Asquith presided over the Cabinet during the period of Campbell-Bannerman's illness while in office, and was sent for by the King as soon as the resignation was communicated. Mr Asquith to some extent remodelled the Cabinet. A conflict with the House of Lords reached its climax by the rejection by that House of the Budget of 1909. A dissolution followed in 1910, at which the Conservatives gained substantially, but not enough to defeat the Government if it was supported by the Irish Nationalists. The introduction of the Parliament Bill compelled a second dissolution in 1910, in spite of the accession of George V. There was no substantial change in the Parliamentary position, and the Government continued with its programme. The outbreak of war in 1914 involved some changes, but secured for the Government the discriminating support of the Conservative Party, until the restiveness of the "Opposition" compelled the formation of a coalition Government in 1915.

## BIBLIOGRAPHY

For the formation of Mr Asquith's Government, see Lee, *King Edward VII*, II, pp. 578-82; *Esher Papers*, II, pp. 256, 272-3; *Life of Lord Oxford and Asquith*, I, pp. 194-8.

For the Constitutional crisis of 1909-11, see Lee, *King Edward VII*, II, pp. 664-71 and 695-714; *Life of Lord Oxford and Asquith*, I, pp. 252-342; *Life of Lord Lansdowne*, pp. 373-431; *Life of John Redmond*, pp. 161-90.

24. *Coalition Government, 1915-1916*

Prime Minister: Mr Asquith.

The Conservative "Opposition" gave support to the Liberal Government during the early months of the war. During the early months of 1915, however, it became increasingly restive. Sir John French endeavoured to blame the Government for his failure in the second Battle of Ypres by suggesting that the cause was the shortage of high-explosive. Communications to the effect were made to the Conservative leaders. A dispute between Mr Winston Churchill and Lord Fisher at the Admiralty resulted in the resignation of the latter. The Conservatives supported Lord Fisher, and Mr Bonar Law informed Mr Asquith, through Mr Lloyd George, that some change in the Government was necessary for Conservative support. Mr Asquith then secured the King's assent to the formation of a coalition Government, containing Liberal, Unionist and Labour Members.

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*Life of Lord Oxford and Asquith*, II, pp. 164-72; *Memoirs of David Lloyd George*, I, pp. 223-35; Beaverbrook, *Politicians and the War*, I, pp. 90-115.

25. *Coalition Government, 1916-1921*

Prime Minister: Mr Lloyd George.

Late in 1916 the lack of military success led to a growing public feeling against the Coalition Government, and especially against the Prime Minister. Mr Lloyd George, within the Government, urged the formation of an effective War Committee, of which the Prime Minister should not be a member, to take day-to-day decisions on the conduct of the war. Mr Bonar Law was gradually brought to the same conclusion. The Prime Minister, however, insisted that he should be chairman. Apart from Bonar Law, the Unionist members of the Government were against Lloyd George; and they requested Mr Asquith to resign, in the belief, apparently, that Mr Lloyd George would be asked to form a Government and would then find himself without support. Mr Bonar Law omitted to show the document to the Prime Minister, who understood that the Unionists were supporting Mr Lloyd George against him. After some communication with Mr Lloyd George, Mr Asquith received the King's commission to form a new Government.

Mr Bonar Law refused to serve in a new Government if the War Committee (without Asquith) was not set up, and Mr Lloyd George resigned. Mr Asquith then resigned and advised the King to send for Mr Bonar Law. Mr Bonar Law found that Mr Asquith would not serve under him or under Mr Balfour, a refusal which he maintained at a conference between the King and the party leaders. He then advised the King to send for Mr Lloyd George, who was able to form a Government without Mr Asquith. The effective conduct of the war now passed to a War Cabinet of five members, which continued, with changes of personnel, in 1919. At the "Khaki" election of 1918, the first since 1911, its opponents were overwhelmed. The ordinary Cabinet system was restored in 1919, and the Coalition continued until 1921.

## BIBLIOGRAPHY

Accounts of the formation of the second Coalition do not entirely agree. See Beaverbrook, *Politicians and the War*, II, pp. 208-325; *Life of Lord Oxford and Asquith*, II, pp. 248-78; *Memoirs of David Lloyd George*, II, pp. 997-1000; Addison, *Four-and-a-Half Years*, I, pp. 271-8; A. Chamberlain, *Down the Years*.

26. *Conservative Government, 1922-1923*

Prime Minister: Mr Bonar Law.

The Conservative Party outside the Government in 1921 became increasingly dissatisfied with the conduct of public affairs. At a Party meeting there was an overwhelming majority in favour of breaking up the Coalition. Mr Bonar Law, who had resigned in 1920 on account of ill-health, expressed strong views to that effect. Mr Lloyd George immediately resigned, without meeting Parliament, and Mr Bonar Law formed a wholly Conservative Government. At the ensuing general election the Government secured a majority. But ill-health soon compelled the Prime Minister to resign.

## BIBLIOGRAPHY

For the formation of the Government of 1922, see *Life of Lord Curzon*, III, pp. 309-21; Nicolson, *Curzon, The Last Phase*, pp. 276-80; *Life of Lord Birkenhead*, II, pp. 175-9; Salvidge, *Salvidge of Liverpool*, pp. 235-49.

27. *Conservative Government, 1923*

Prime Minister: Mr Baldwin.

Mr Bonar Law's resignation created a serious problem. Lord Curzon was the most experienced of the ministers. But he was in the House of Lords, and the official "Opposition" was provided by the

Labour Party, who were unrepresented in that House. It is said that Lord Balfour, Lord Long, Lord Salisbury, and Mr Amery were consulted by the King, who, in the end, sent for Mr Baldwin to reconstitute the Government. Mr Baldwin came to the conclusion that the problem of unemployment could not be met except by a system of tariffs, but as he was precluded from introducing this remedy because of the pledges of his predecessor, the Government advised a dissolution. The Conservatives remained the strongest party after the election, but they could be out-voted by a combination of Liberal and Labour members. The Government met Parliament, was defeated on a no-confidence amendment to the Address, and resigned.

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For the appointment of Mr Baldwin, see *Life of Lord Curzon*, III, pp. 349-54; Nicolson, *Curzon, The Last Phase*, pp. 352-6.

28. *Labour Government, 1923-1924*

Prime Minister: Mr MacDonald.

On the resignation of the Conservative Government the King sent for Mr MacDonald, as leader of the Opposition, who formed a Labour Government. The Government could count on only one-third of the votes in the House of Commons, but was able to secure Liberal support for most of its measures until it was defeated on the Campbell case. The Government advised a dissolution, but, as the Conservatives obtained a clear majority, resigned without meeting the new Parliament.

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Snowden, *Autobiography*, II, pp. 589-612; Bibesco, *Lord Thomson of Cardington*, pp. 149-53.

29. *Conservative Government, 1924-1929*

Prime Minister: Mr Baldwin.

Mr Baldwin formed a Conservative Government which remained in office throughout that Parliament. At the general election of 1929 it lost its majority, and the Labour Party became the strongest party, though also without a majority. The Government therefore resigned without meeting Parliament.



30. *Labour Government, 1929-1931*

Prime Minister: Mr MacDonald.

Mr MacDonald formed a Labour Government which secured Liberal support for its main measures. In 1931 serious deflationary measures were demanded in order to meet currency difficulties. The Cabinet could not agree on the measures for the purpose, and resigned.

## BIBLIOGRAPHY

Snowden, *Autobiography*, II, pp. 754-69.

31. *Coalition ("National") Government, 1931*

Prime Minister: Mr MacDonald.

When the resignation of the Labour Government became imminent, the Prime Minister advised the King to see the leaders of the Conservative and Liberal parties. The Government resigned, and the Prime Minister himself then saw the Opposition leaders. On the following day, on the advice of the Prime Minister, the King saw the three party leaders, and it was agreed that a Coalition ("National") Government should be formed. Meetings of the Conservative and Liberal Parties approved the formation of the National Government. No meeting of the Labour Party was called, and the great majority of its members went into Opposition.

## BIBLIOGRAPHY

Snowden, *Autobiography*, II, pp. 929-61; Webb, "What Happened in 1931: A Record", 3 *Political Quarterly*, pp. 1-17.

32. *Coalition ("National") Government, 1932-1935*

Prime Minister: Mr MacDonald:

The first National Government was a temporary Government to take the measures deemed immediately necessary for the protection of the financial structure. Parliament was then dissolved, an enormous Government majority secured, and the National Government reconstructed. In 1932 several of the Liberal members resigned and went into Opposition.

33. *Coalition ("National") Government, 1935-*

Prime Minister: Mr. Baldwin.

In 1935 Mr MacDonald resigned on the ground of ill-health, and Mr Baldwin became Prime Minister. He maintained the coalition character of the Government, and Mr MacDonald accepted another office. Its majority was somewhat reduced at the general election of 1935, but was still very large.

## APPENDIX II

### His Majesty's Government (1936)

(Formed by the Right Hon. Stanley Baldwin, June, 1935)<sup>1</sup>

#### THE CABINET

Prime Minister, First Lord of the Treasury, and Leader of the House of Commons: Rt Hon. STANLEY BALDWIN, M.P.

Lord President of the Council: Rt Hon. JAMES RAMSAY MACDONALD, M.P.

Chancellor of the Exchequer: Rt Hon. NEVILLE CHAMBERLAIN, M.P.

Lord Chancellor: Rt Hon. Viscount HAILSHAM.

Secretary of State for the Home Department and Deputy Leader of the House of Commons: Rt Hon. Sir JOHN SIMON, G.C.S.I., K.C.V.O., O.B.E., K.C., M.P.

Secretary of State for Foreign Affairs: Rt Hon. ROBERT ANTHONY EDEN, M.C., M.P.

Lord Privy Seal and Leader of the House of Lords: Rt Hon. Viscount HALIFAX, K.G., G.C.S.I., G.C.I.E.

Secretary of State for War: Rt Hon. ALFRED DUFF COOPER, D.S.O., M.P.

Secretary of State for Dominion Affairs: Rt Hon. MALCOLM JOHN MACDONALD, M.P.

Secretary of State for Air: Rt Hon. Viscount SWINTON, G.B.E., M.C.

Secretary of State for India: Most Hon. The Marquess of ZETLAND, G.C.S.I., G.C.I.E.

Secretary of State for Scotland: Rt Hon. Sir GODFREY COLLINS, K.B.E., C.M.G., M.P.

Secretary of State for the Colonies: Rt Hon. WILLIAM GEORGE ARTHUR ORMSBY-GORE, M.P.

President of the Board of Trade: Rt Hon. WALTER RUNCIMAN, M.P.

First Lord of the Admiralty: Rt Hon. Sir SAMUEL HOARE, Bt., G.C.S.I., G.B.E., C.M.G., M.P.

Minister for the Co-ordination of Defence: Rt Hon. Sir THOMAS WALKER HOBART INSKIP, C.B.E., K.C., M.P.

Minister of Agriculture and Fisheries: Rt Hon. WALTER E. ELLIOT, M.C., M.P.

<sup>1</sup> Corrected to 29th June, 1936.

President of the Board of Education: Rt Hon. OLIVER FREDERICK  
GEORGE STANLEY, M.C., M.P.  
Minister of Health: Rt Hon. Sir H. KINGSLEY WOOD, M.P.  
Minister of Labour: Rt Hon. ALFRED ERNEST BROWN, M.C., M.P.  
First Commissioner of Works: Rt Hon. the Earl STANHOPE, K.G.,  
D.S.O., M.C.

## DEPARTMENTS OF STATE

### *Home Affairs*

Secretary of State: Rt Hon. Sir JOHN SIMON, G.C.S.I., K.C.V.O.,  
O.B.E., K.C., M.P.  
Under-Secretary of State: GEOFFREY WILLIAM LLOYD, Esq., M.P.

### *Foreign Affairs*

Secretary of State: Rt Hon. ROBERT ANTHONY EDEN, M.C., M.P.  
Under-Secretary of State: Viscount CRANBORNE, M.P.  
Overseas Trade Department: Secretary: Captain DAVID EUAN  
WALLACE, M.C., M.P. [*Representing Foreign Office and Board of  
Trade.*]

### *Dominion Affairs*

Secretary of State: Rt Hon. MALCOLM JOHN MACDONALD, M.P.  
Under-Secretary of State: Marquess of HARTINGTON, M.P.

### *Colonial Office*

Secretary of State: Rt Hon. WILLIAM GEORGE ARTHUR ORMSBY-  
GORE, M.P.  
Under-Secretary of State: Rt Hon. the Earl of PLYMOUTH.

### *War Office*

Secretary of State: Rt Hon. ALFRED DUFF COOPER, D.S.O., M.P.  
Under-Secretary of State: Lord STRATHCONA AND MOUNT ROYAL.  
Financial Secretary: Sir VICTOR ALEXANDER GEORGE ANTHONY  
WARRENDER, Bt., M.C., M.P.

### *Air Ministry*

Secretary of State: Rt Hon. Viscount SWINTON, G.B.E., M.C.  
Under-Secretary of State: Rt Hon. Sir PHILIP SASSOON, Bt., G.B.E.,  
C.M.G., M.P.

*Lord President of the Council*

Rt Hon. JAMES RAMSAY MACDONALD, M.P.

*Lord Privy Seal*

Rt Hon. Viscount HALIFAX, K.G., G.C.S.I., G.C.I.E.

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Under-Secretary of State: RICHARD AUSTEN BUTLER, Esq., M.P.

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Parliamentary and Financial Secretary: Rt Hon. Lord STANLEY, M.C., M.P.

Civil Lord: KENNETH MARTIN LINDSAY, Esq., M.P.

*Minister for the Co-ordination of Defence*

Rt Hon. Sir THOMAS WALKER HOBART INSKIP, C.B.E., K.C., M.P.

*Board of Trade*

President: Rt Hon. WALTER RUNCIMAN, M.P.

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Department of Overseas Trade: Secretary: Captain DAVID EUAN WALLACE, M.C., M.P., [*Representing Foreign Office and Board of Trade.*]

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Parliamentary Secretary: GEOFFREY HITHERSAY SHAKESPEARE, Esq., M.P.

*Ministry of Transport*

Minister: Rt Hon. LESLIE HORE-BELISHA, M.P.

Parliamentary Secretary: Captain AUSTIN UVEDALE MORGAN HUDSON, M.P.

*Board of Education*

President: Rt Hon. OLIVER FREDERICK GEORGE STANLEY, M.C.,  
M.P.

Parliamentary Secretary: Earl DE LA WARR.

*Ministry of Labour*

Minister: Rt Hon. ALFRED ERNEST BROWN, M.C., M.P.

Parliamentary Secretary: Lieut.-Colonel ANTHONY JOHN MUIRHEAD,  
M.C., M.P.

*Ministry of Pensions*

Minister: ROBERT SPEAR HUDSON, Esq., M.P.

*Ministry of Agriculture and Fisheries*

Minister: Rt Hon. WALTER E. ELLIOT, M.C., M.P.

Parliamentary Secretary: HERWALD RAMSBOTHAM, Esq., O.B.E.,  
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*Chancellor of the Duchy of Lancaster*

Rt Hon. Sir JOHN COLIN CAMPBELL DAVIDSON, G.C.V.O., C.H.,  
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*Attorney-General*

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*Solicitor-General*

Sir TERENCE JAMES O'CONNOR, K.C., M.P.

*General Post Office*

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M.P.

Assistant Postmaster-General: Sir WALTER JAMES WOMERSLEY,  
M.P.

*Paymaster-General*

Lord HUTCHISON, K.C.M.G., C.B., D.S.O.

*Treasury*

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Parliamentary Secretary: Captain Rt Hon. HENRY DAVID REGINALD MARGESSON, M.C., M.P.

Financial Secretary: WILLIAM SHEPHERD MORRISON, Esq., M.C., K.C., M.P.

Lords Commissioners

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Hon. JAMES STUART, M.V.O., M.C., M.P.

Commander ARCHIBALD RICHARD JAMES SOUTHEY, M.P.

Dr JOHN HENRY MORRIS-JONES, M.C., M.P. (*unpaid*).

Captain Hon. ARTHUR OSWALD JAMES HOPE, M.C., M.P. (*unpaid*).

Assistant Whips (*unpaid*)

Lieut.-Colonel JOHN JESTYN LLEWELLIN, O.B.E., M.C., M.P.

Captain CHARLES WATERHOUSE, M.C., M.P.

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*Scotland*

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Under-Secretary of State: Lieut.-Colonel DAVID JOHN COLVILLE, M.P.

Lord Advocate: Rt Hon. THOMAS MACKAY COOPER, O.B.E., K.C., M.P.

Solicitor-General: ALBERT RUSSELL, Esq., K.C.

*His Majesty's Household*

Lord Chamberlain: Rt Hon. the Earl of CROMER, G.C.B., G.C.I.E., G.C.V.O.

Lord Steward: Rt Hon. the Earl of SHAFTESBURY, K.P., G.C.V.O., C.B.E.

Master of the Horse: Rt Hon. the Earl of GRANARD, K.P., G.C.V.O.

Treasurer: Sir FREDERICK GEORGE PENNY, Bt., M.P.

Comptroller: Lieut.-Colonel Sir ALBERT LAMBERT WARD, Bt., D.S.O., M.P.

Vice-Chamberlain: Major GEORGE FREDERICK DAVIES, M.P.

Captain of the Honourable Corps of Gentlemen-at-Arms: The Earl of LUCAN, K.B.E., C.B.

Captain of the King's Bodyguard of the Yeomen of the Guard: Lord TEMPLEMORE, D.S.O., O.B.E.

Lords-in-Waiting

Lord COLEBROOKE, P.C., G.C.V.O.

Viscount HAMPDEN, G.C.V.O., K.C.B., C.M.G.

The Earl of DŪNMORE, V.C., D.S.O., M.V.O.

The Earl of MUNSTER.

Viscount GAGE.

The Earl of FEVERSHAM.

---

Forestry Commissioner: Colonel Sir GEORGE COURTHOPE, Bt.,  
M.C., M.P.

Charity Commissioner: EDWARD CLEMENT DAVIES, Esq., K.C.,  
M.P.

Second Church Estates Commissioner, representing Ecclesiastical  
Commissioners: Hon. RICHARD DOUGLAS DENMAN, M.P.



## APPENDIX III

### The British Administrative System

This Appendix is intended to give a picture of the British administrative system more detailed than that exhibited in Chapter IV. The difficulty of the task is, however, immense. So far as the system depends upon legislation, it can be set out with reasonable accuracy. Even so, there are difficulties. Authorities permitted by statute are not necessarily in existence. Powers given are sometimes not exercised. Relations depend more upon departmental practice than upon the terms of statutes. Even where a department is directed by law to set up a body such as an advisory committee it does not necessarily follow that that body is still in existence. Further, some of the most important Departments are not statutory creations but have been set up under the prerogative powers of the Crown. The legal instruments are then sign manual warrants, commissions under the Great Seal, or Treasury or other Departmental minutes, none of which is published or even announced. It would be possible to find out full details by inquiry from each Department. For the purposes of this book, the effort would not be commensurate with the results. The following account is necessarily imperfect, but it will probably be sufficient to illustrate the extraordinary ramifications of the British administrative system. No attempt has been made to indicate the internal organisation of any Department except where it is specifically provided for by statute or where a sub-department has been set up outside the normal departmental system.

#### I. DEPARTMENTS WITH RESPONSIBLE MINISTERS

##### 1. *The Admiralty*

The Office of Lord High Admiral is exercised by Lords Commissioners appointed by Order in Council, the Commissioners being known collectively as the Board of Admiralty. By the Order in Council of November 5th, 1929, the Board is composed of: the First Lord, the First Sea Lord (who is also Chief of the Naval Staff), the Second Sea Lord (who is also Director of Naval Personnel), the Third Sea Lord (who is also Controller), the Fourth Sea Lord (who is also Chief of Supplies and Transport), the Deputy Chief of Naval Staff, the Parlia-

mentary and Financial Secretary, the Civil Lord, and the Permanent Secretary. The Board, unlike many of the other Boards in the Central Government, actually meets from time to time, though the responsibility for decisions rests with the First Lord who can, therefore, overrule the Board.

The First Lord is a member of the Cabinet. The Parliamentary and Financial Secretary and the Civil Lord are junior ministers and therefore members of Parliament. The four Sea Lords are naval officers, while the Permanent Secretary is a civil servant occupying in the Admiralty the same position as Permanent Secretaries in other Departments.

Besides the Royal Navy, the Board controls the three Royal Observatories and H.M. Nautical Almanac Office.

## 2. *The Ministry of Agriculture and Fisheries*

A Board of Agriculture was established in 1889 by statute. The functions of the Fisheries Department were transferred to it in 1903, when it became the Board of Agriculture and Fisheries. It was converted into a Ministry by legislation in 1919. The Minister is a member of the Cabinet and is assisted by a Parliamentary Secretary who is a junior member.

The Ministry controls the Ordnance Survey and the Royal Botanical Gardens, Kew. It is represented on the Crown Lands Commission and is in contact with the Forestry Commission. It has powers of control over the limited functions given to local authorities in respect of agriculture, and by means of its power to approve schemes submitted by those authorities it has even limited powers of control over the composition of the agricultural committees of the authorities. It has, in addition, powers of control over the *ad hoc* authorities (which differ from the general local authorities in that they are not directly elected by local government electors) dealing with land drainage and fisheries.

Provision is made by legislation for a number of advisory committees. These are: the Agricultural Advisory Council, Councils of Agriculture for England and Wales respectively, a Fertilisers and Feeding-Staffs Committee, a Committee for advising as to grants to unemployed persons, and three Committees to advise the Minister, the Secretary of State for Scotland (in respect of the Department of Agriculture for Scotland) and the Home Secretary (in respect of Northern Ireland), namely, the Market Supply Committee, the Sea-Fish Commission, and the Cattle Committee.

Recent legislation has considerably extended State interference in the various agricultural industries. The Ministry directly administers the Beet Sugar Subsidy and the Cattle Subsidy, being advised as to the latter by the Cattle Committee. But both are intended to be temporary, and the policy of the Ministry (whatever Government is in power) appears to be to provide State assistance rather through semi-autonomous bodies connected with and in part controlled by the Ministry. The Agricultural Wages Board determines minimum wages for agricultural workers through local Agricultural Wages Committees. In respect of agricultural marketing there are marketing boards (for hops, milk, bacon and pigs, and potatoes) elected by registered producers in accordance with schemes promoted either by producers or by the Agricultural Marketing Reorganisation Commission. Development Boards for secondary industries arising out of the marketing system may be set up. The Minister may establish, also, a Consumers' Committee to watch the interests of consumers and to investigate complaints, and a Committee of Investigation to investigate such complaints as are not investigated by the Consumers' Committee. Loans may be made to a marketing board by the Ministry on the advice of an Agricultural Marketing Facilities Committee.

A Herring Industry Board set up under special legislation is rather like a marketing board, though it will contain no elected representatives of the industry unless and until a scheme for that purpose is approved by the Ministry and by Parliament. A Consumers' Committee and a Committee of Investigation are provided for.

Assistance to wheat producers is provided from a Wheat Fund under the control of the Wheat Commission. A Flour Millers' Corporation is also provided for to take a percentage of wheat if the Commission so decides. Assistance to agricultural producers generally may be given by a mortgage corporation in the form of credits.

### 3. *The Air Ministry*

The Office of Secretary of State for Air is, technically, but a part of the Office of Secretary of State, a prerogative office which may be vested in as many joint Secretaries of State as the Crown thinks fit. There are eight such offices as distinct in fact as the statutory Departments are distinct. Legislation was necessary in 1917, however, in order to provide for the establishment of the Air Council by which the Secretary of State is advised and to enable the Secretary of State to sit in the House of Commons. The Secretary of State is assisted by a

junior minister, the Parliamentary Under-Secretary of State for Air. The Secretary of State is always a member of the Cabinet.

The Air Council consists of the Secretary and the Under-Secretary of State, the Chief of the Air Staff, the Air Member for Personnel, the Air Member for Research and Development, the Air Member for Supply and Organisation, and the Secretary of the Air Ministry. The Secretary of State is advised by the Aeronautical Research Committee. The Air Ministry, besides controlling the Air Force, controls also the Meteorological Office.

#### 4. *The Colonial Office*

The Colonial Office is another of the offices with a Secretary of State and a Parliamentary Under-Secretary of State, the former being a member of the Cabinet and the latter a junior minister. The Office controls in the name of the Crown the various colonial governments and the governments of most of the protectorates and of the mandated territories administered by the Crown. It is in control, therefore, of the Colonial Service.

The Colonial Office shares a building with the Dominions Office, and certain sub-departments are common to both. The Office is concerned directly or indirectly with some of the semi-autonomous authorities also connected with the Dominions Office. It has control over the Crown Agents for the Colonies.

#### 5. *The Dominions Office*

The Dominions Office was separated from the Colonial Office by prerogative action in 1925. It now has a separate Secretary of State in the Cabinet, and a separate Parliamentary Under-Secretary of State who is a junior minister. Though a distinct Department, it shares certain sub-departments with the Colonial Office. It is concerned with the relations between the Government of the United Kingdom and the Governments of the Dominions (including Newfoundland) and of Southern Rhodesia.

A number of semi-autonomous authorities are concerned with special inter-Imperial problems and are therefore in touch with the Dominions and Colonial Offices:

- (i) The Imperial Economic Committee is an advisory committee on which the Governments of the United Kingdom, the Dominions, India and Southern Rhodesia, and the Colonial Empire are represented.

- (ii) The Imperial Shipping Committee inquires into and reports on matters connected with the sea communications between the different parts of the Empire, and also on matters of transport by air. It represents the Governments of the Empire and also contains members experienced in shipping and commerce and civil aviation. It is, however, more closely connected with the Board of Trade than with the Colonial and Dominions Offices.
- (iii) The Executive Council of the Imperial Agricultural Bureaux supervises the eight Imperial Agricultural Bureaux and consists of members appointed by the subscribing Governments. The British representatives are (or were in 1933) appointed by the Ministry of Agriculture and the Department of Health for Scotland. Its employees are not civil servants of any of the Governments, but are employees of the Council itself.
- (iv) The Imperial Institute of Entomology represents three Government Departments, the Dominion Governments, and certain colonial governments. It is a clearing house for information and it identifies insects of economic importance received from the Dominions and Colonies. Besides contributions from the British, Dominion, Colonial and Indian Governments, small contributions to its funds are made by the Governments of Egypt, Siam and Iraq.
- (v) The Imperial Mycological Institute is governed by a committee appointed by the Secretary of State for the Colonies, on which the chief mycologists of each Dominion serve *ex officio*. It is financed by funds provided by the Ministry of Agriculture, the Departments of Agriculture for Scotland and Northern Ireland, and the Governments of the Dominions, Colonies and India. It has two main functions, the dissemination of information, and the identification and study of fungi of economic importance.
- (vi) The Bureau of Hygiene and Tropical Diseases is managed by a committee appointed by the Secretary of State for the Colonies. Though mainly professional in character, it contains representatives of the Colonial Office, the Ministry of Health, and the Foreign Office (for the Anglo-Egyptian Sudan). It contains no representatives of the Dominions and Colonies, but receives contributions from them.
- (vii) The Imperial Forestry Institute is managed by a committee appointed by the University of Oxford, the Colonial Office, and the Forestry Commission. Small subscriptions are made by the Dominions.

- (viii) The Standing Committee on Empire Forestry is composed of representatives of the Government of the United Kingdom, of the Governments of two Dominions, of India and of the Colonies. It is primarily concerned with preparation for the Empire Forestry Conferences.
- (ix) The Imperial Institute is managed by the Imperial Institute Trustees and a Board of Governors under the control of the Secretary of the Department of Overseas Trade. The Trustees are five British ministers, but the Board of Governors is the important body, and this contains representatives of nine British Government Departments and of the Dominions and India and is under the chairmanship of the Secretary of the Department of Overseas Trade.
- (x) The Oversea Mechanical Transport Council consists of representatives of certain Dominions and of the Colonial Empire and of India. But ordinary management is left to a Directing Committee appointed by the Secretary of State for the Colonies before Dominion functions were transferred to the Dominions Office.
- (xi) The Empire Timbers Committee was set up by the Department of Scientific and Industrial Research and contains Dominion representatives.

#### 6. *The Board of Education*

The Board of Education is a "board" which never meets and has never met. It was established by statute in 1899 and consists, technically, of a number of eminent persons who, with one exception, are never consulted about the policy or practice of the Board except as members of the Cabinet. The exception is the President of the Board of Education who is a Cabinet minister and who by statute acts on behalf of the Board. The fiction of a "board" was apparently adopted because the functions of the Board were formerly exercised by a Committee of the Privy Council and, technically, the purpose of the Act of 1899 was to separate the administration of education from the Privy Council in the same way as the Board of Trade had become separate from the Privy Council.

The President is assisted by a Parliamentary Secretary who is a junior minister. He has, also, a Consultative Committee provided by statute to which special questions of educational policy are submitted for investigation and report. The Board has control over the Victoria and Albert Museum, the Bethnal Green Museum, and the Royal College of Art, though this control is not provided for by legislation. It has, also, powers of control over local authorities in respect of education

and public libraries, and it is connected with the Imperial War Museum by reason of statutory powers. It is in fact connected with other museums and with the Universities, though it has no powers of control.

#### 7. *The Foreign Office*

The Foreign Office is one of the offices under the control of a Secretary of State, who is a Cabinet minister. It has, however, two Parliamentary Under-Secretaries of State, one of whom is concerned especially with League of Nations business and was formerly the assistant to the Minister without portfolio who dealt with League of Nations affairs. The Département of Overseas Trade is a statutory sub-department subordinate to the Foreign Office and the Board of Trade under the control of a Secretary who is a junior minister.

The Foreign Office is in control of the Diplomatic and Consular Services, and it is responsible for the government of the Anglo-Egyptian Sudan and of those protectorates which are not controlled by the Colonial or India Offices.

#### 8. *The Ministry of Health*

The Ministry of Health has two main functions. It is, on the one hand, concerned with the national health and contributory pensions systems as successor to the Insurance Commission. It is, on the other hand, concerned as successor to the Local Government Board with those aspects of local government which are not within the purview of some other Department. The Ministry itself was established by statute in 1919, and all its functions are statutory.

The Minister is a member of the Cabinet, and he is assisted by a Parliamentary Secretary who is a junior minister. Provision is made by legislation for the setting up of Consultative Councils, but these seem to have disappeared in 1921. There is, however, a Central Housing Advisory Committee. In respect of his functions in connection with national health insurance, he is advised by the National Health Insurance Joint Committee, upon which the Department of Health for Scotland is also represented. Another advisory committee representing both Departments is the Therapeutic Substances Joint Committee.

Certain functions of the Ministry are delegated under statutory authority to the Welsh Board of Health. The Ministry is also in general control of the General Register Office and the Board of Control. The former is concerned with the registration of births, marriages and deaths and with population changes generally, and the latter with the care of persons of unsound and defective mind. Both are separate accounting

bodies. The Pathological Laboratory and the Government Lymph Establishment are technically part of the Ministry but in fact enjoy a certain measure of independence.

The Ministry is also connected with the Central Midwives Board and the Nurses' Registration Council, which are semi-professional and semi-governmental bodies concerned with the admission to and the discipline of their respective professions. In many respects the Minister has powers of control over local authorities and over water undertakers, whether local authorities or public utility companies. He has in addition certain powers of control over housing associations which are of the nature of public utility companies.

### 9. *The Home Office*

The Home Office is another prerogative Department under the control of a Secretary of State in the Cabinet, assisted by a Parliamentary Under-Secretary who is a junior minister. The Office is placed by statute in control of the Metropolitan Police and of the Prison Commission. The latter is, however, a separate accounting authority. With the Scottish Office, the Home Office is in control of the State Management Districts Council which controls the sale of liquor where it is a State monopoly. The Council is a separate accounting body. In respect of his functions for the control of poisons, the Secretary of State is advised by a statutory Poisons Board.

The Home Office controls, subject to limitations, the functions of local authorities in respect of elections and police. It is connected with the courts of summary jurisdiction, especially in the Metropolitan Area, and it has powers of control over approved schools and voluntary homes. It is connected with the Racecourse Betting Control Board, though its actual powers are small in this connection.

### 10. *The India Office*

The India Office is yet another prerogative office under the control of a Secretary of State, assisted by a Parliamentary Under-Secretary of State. The Secretary of State is, however, advised by a Council of India and, when the Government of India Act, 1935, takes effect there will be also a Council of Burma.<sup>1</sup> The Government of British India is under the control of the Office, though the latter's powers in this respect will shortly be diminished. The Secretary of State also exercises on behalf of the Crown, either directly or through the Governor-General,

<sup>1</sup> It has now been decided to set up a Burma Office, though with the same Secretary and Parliamentary Under-Secretary of State.



the powers which the Crown possesses over the Indian States. The Office is also responsible for the government of those protectorates which are attached to the Government of India.

#### 11. *The Ministry of Labour*

The Ministry of Labour was established under statutory authority in 1917 to take over certain functions of the Board of Trade and to exercise certain other functions. The Minister is a member of the Cabinet and is assisted by a Parliamentary Secretary who is a junior minister. The Minister is advised by an Unemployment Insurance Statutory Committee and by Cotton Industry Boards.

The Minister has certain statutory powers of control over the Unemployment Assistance Board, which has, however, wide discretionary powers. The Minister is also closely concerned with certain semi-judicial authorities, though he has no right to affect their decisions. The courts of referees and the Unemployment Insurance Umpire are concerned with legal questions governing the grant of unemployment insurance benefit; and the appeal tribunals under the Unemployment Assistance Act are similarly concerned with the grant of unemployment assistance. Trade boards, industrial courts, and the London Passenger Transport Wages Board, are concerned with questions as to conditions of labour.

#### 12. *The Duchy of Lancaster*

The Council of the Duchy of Lancaster manages on behalf of the King the property held by the King in right of his Duchy of Lancaster. These properties have not been surrendered to the Treasury, so that they are the private concern of the King. The Chancellor of the Duchy is, however, a minister, and he is usually in the Cabinet. His functions are, however, few, and are primarily concerned with public offices in Lancashire. His salary is paid out of the funds of the Duchy, so he is not strictly accountable to Parliament.

#### 13. *The Law Officers*

The Attorney-General and Solicitor-General are primarily concerned with representing the Crown and the Departments in the Courts and with advising the Government on legal questions. They are, however, ministers, and on occasions the Attorney-General has been in the Cabinet. The Attorney-General has certain administrative functions, of which the most important is the control of the Director of Public Prosecutions.

*14. The Lord Advocate's Department*

The Lord Advocate and the Solicitor-General for Scotland are in much the same position as the English Law Officers. On occasions, however, they have not been junior ministers but the offices have been held by persons out of Parliament. The Department controls the office of the Procurator-fiscal, and the Lord Advocate is a member of the Northern Lighthouses Commission.

*15. The Lord Chancellor's Department*

The Lord Chancellor occupies an anomalous position. He is a member of the Cabinet, a judge in the House of Lords, the Judicial Committee of the Privy Council, and the Supreme Court of Justice, Speaker of the House of Lords, and the head of a department with important administrative duties.

He is in charge of the County Courts Department, which is in control of the administrative side of the work of the county courts. He has certain administrative powers over the Central Office of the Supreme Court, but much of the administration of that office is controlled by the judges. His Private Secretary is Clerk of the Crown in Chancery, a freehold office. The Lord Chancellor is in control of the Land Registry and the Public Trustee Office, but these are sufficiently distinct to have their own accounting officers. He is a member of the Rule Committee of the Supreme Court which determines the procedure of the Supreme Court, and he confirms the rules made by the County Courts Rule Committee. He is connected with the Pensions Appeal Tribunals, and has powers in respect of certain other administrative tribunals.

*16. Ministry of Pensions*

The Ministry of Pensions was established in 1916 to take control of the pensions system arising out of the war of 1914-18. Its functions necessarily decrease in importance as the persons in receipt of pensions become less numerous. The Minister is a junior minister and has no Parliamentary Secretary. He is advised by a Central Advisory Committee and by local Pensions Committees, which deal with individual cases, subject to ministerial approval. An Act of 1917 also provides for the exercise of functions by a Special Grants Committee under the Minister's control. Two administrative tribunals are connected with the Department, namely, the Ministry Appeal Tribunals and the Pensions Appeal Tribunals.

17. *The Post Office*

The Post Office is an ancient prerogative Department, but its functions have been so regulated by legislation that it may be said to have lost its prerogative character. Its head is the Postmaster-General, who is usually not in the Cabinet. He is, or may be, assisted by an Assistant Postmaster-General who is also a junior minister. There is now a Post Office Board, consisting mainly of officials, provided for by statute, and at various times advisory committees have been established for various Post Office services, both nationally and locally. The British Broadcasting Corporation is a chartered corporation exercising monopoly powers by legislative authority, and subject to certain limited powers of control by the Post Office, which collects the major part of the Corporation's income through licence duties.

18. *The Privy Council Office*

The Privy Council Office is an ancient prerogative Department under the control of the Lord President of the Council, who is a member of the Cabinet, though his departmental duties are not great. From time to time it has been shorn of its administrative functions, and as often has received new duties. The Board of Trade and the Board of Education are now separate from the Council, but the growth of professional organisations with statutory powers of regulating entry into and discipline within their professions has added to its functions. The chief subordinate Department is the Department of Scientific and Industrial Research, a prerogative Department possessing some statutory functions. This Department in turn has the Geological Survey, the National Physical Laboratory, and certain other Research Stations under its control. It is advised by an Advisory Council.

Charters are granted by the Crown on the advice of a committee of the Privy Council. Accordingly, the administrative questions involved in the grant of charters to Universities, municipal boroughs, and other bodies are dealt with by the Privy Council Office. The Judicial Committee of the Privy Council is a permanent committee of the Privy Council established under statute to advise the Crown on appeals from courts in the British dominions and in other places where the Crown has jurisdiction outside the United Kingdom. The administrative work is undertaken by a special staff attached to the Privy Council Office.

The most important professional bodies attached to the Privy Council are the General Medical Council and the Medical Research

Council. But recent legislation has added to them the Architects' Registration Council, the Dental Board and the Pharmaceutical Society. These are independent professional bodies, but the Privy Council has certain powers of control.

### 19. *The Scottish Office*

The Scottish Office became in 1926 one of the offices with a Secretary of State, though before that time it had a Secretary who was usually a Cabinet minister. Until 1885 the separate Scottish Departments were under the general control of an Under-Secretary at the Home Office. The Secretary of State is always a Cabinet minister, and he is assisted by a Parliamentary Under-Secretary who is a junior minister.

Until 1926 Scottish affairs were dealt with either by Departments concerned also with England and Wales, or by statutory Boards exercising functions not essentially dissimilar from those exercised by Departments under Ministers in England and Wales. This system was, however, disapproved by the Royal Commission on the Civil Service in 1914. The Boards of Agriculture, Education, and Health have therefore been superseded by Departments which are under the general control of the Secretary of State. The Scottish Education Department is governed technically by a Committee of the Privy Council, but the Secretary of State is Vice-President and in fact responsible. There are in addition a Fishery Board for Scotland connected with the Department of Agriculture for Scotland and a Prison Commission which is more closely associated with the Scottish Office. The General Register Department and the General Board of Control are under the general control of the Department of Health, much as the General Register Office and the Board of Control are under the control of the Minister of Health in England. The State Management Districts Council is under the joint control of the Scottish Office and the Home Office.

Provision is made by statute for certain advisory committees. The Board of Agriculture has an advisory committee for allotments, while the Sea Fish Commission is advisory both to the Department of Agriculture and to the Ministry of Agriculture. The Department of Agriculture, in fact, has the same complicated structure of connected and subordinate or advisory bodies as the Ministry of Agriculture. It is, too, similarly associated with the local authorities. The Scottish Education Department has an Education Advisory Council and possesses powers of control over the local education authorities. The National Health Insurance Joint Committee is advisory to the Department of

Health and the Ministry of Health. The Scottish Office both directly and through the Department of Health has powers over local authorities.

### 20. *The Board of Trade*

The Board of Trade is technically a committee of the Privy Council, and its constitution is determined by an Order in Council of August 23rd, 1706. When asked in 1930 the President was "unable to say when the Board in its corporate capacity last met" (238 H.C.Deb. 5 s., 13). Modern legislation invariably enables the Board to act through its President or Parliamentary Secretary or some other officer designated by the President. In substance, therefore, the Board of Trade is an ordinary Department with a responsible minister, called the President of the Board, who is a member of the Cabinet. The President is assisted by a Parliamentary Secretary who is a junior minister. There are two other junior ministers in the Department. The Secretary of the Mines Department acts under the directions of the President, and the Secretary of the Department of Overseas Trade acts under the directions of the President and the Secretary of State for Foreign Affairs.

The Mines Department is thus a subordinate department of the Board of Trade and the Department of Overseas Trade a subordinate department of the Board of Trade and the Foreign Office jointly. They are both separate accounting departments, and have distinct votes in Class VI. There are three other separate statutory departments of the Board of Trade, though they have not separate ministers. These are the Bankruptcy Department, the Companies (Winding-up) Department, and the Patent Office. These are under the control of the President, though they exercise technical functions which do not demand close administrative control. The Bankruptcy Department has a separate vote in Class VI, but has the same accounting officer as the Board. The Board is also in control of the general and local lighthouse authorities established under the Merchant Shipping Acts.

The Board has an advisory council established under general powers. It includes representatives of important commercial and industrial organisations, of the principal industries of the country, of banking and finance, of labour and of the Dominion Governments and India. It meets regularly under the chairmanship of the President, and its primary function is to inform the Government of the position and prospects of British trade and industry. The Board is advised on special subjects by committees set up under statutory authority. These deal with cinematograph films, with dyestuffs, with German Reparations,

with the importation of plumage, with food, and with merchandise marks. Subsidies to tramp shipping are granted on the advice of a Tramp Shipping Subsidy Committee; and the Board is advised as to proposals for the demolition and building or modernisation of vessels by a Ships Replacement Committee. The Mines Department is advised by an advisory committee for mines, and by a committee on miners' welfare. The Overseas Trade Department has an advisory committee for the exercise of its functions in respect of overseas trade credits. The Export Credit Department has, in fact, a separate vote (Class VI, vote 5), for which the Department of Overseas Trade accounts to the Treasury.

The Board of Trade has powers of control over gas undertakers, and the Mines Department has associated with it a Coal Mines National Industrial Board, a Coal Mines Reorganisation Commission, and a Central Council of Coalowners.

The Institute of Industrial Art is governed by a Council representing the Board of Education and the Board of Trade.

### 21. *The Ministry of Transport*

The Ministry of Transport was created in 1919 to take over certain of the functions of the Board of Trade and to exercise the functions which were, it was contemplated, to be given to it when a decision had been taken as to the future of the railways. It has a responsible minister who is, usually, not a member of the Cabinet. Usually, too, it has a Parliamentary Secretary who is a junior minister. The Ministry controls Holyhead Harbour, Ramsgate Harbour, the Caledonian Canal, the Crinan Canal, and the Menai Bridge. The Electricity Commission acts under the general directions of the Minister.

In respect of each of its major functions the Ministry has an advisory committee, namely, a Roads Advisory Committee, a Tramways Advisory Committee, and a Transport Advisory Committee. A Rates Advisory Committee is concerned with railway rates. The London and Home Counties Advisory Committee is concerned primarily with transport problems of all kinds in the neighbourhood of London. The Electricity Advisory Committee is advisory to the Electricity Commission.

The Central Electricity Board and the London Passenger Transport Board are independent statutory authorities connected with the Ministry of Transport, but with independent sources of revenue and independent statutory powers. The Central Electricity Board supplies

electricity in bulk to electricity undertakers and railways companies, and the London Passenger Transport Board runs on a commercial basis the passenger transport system in the neighbourhood of London (the main line railways excepted). Co-ordination between the London Passenger Transport Board and the main line railways is provided by the Standing Joint Committee on London Transport. The Ministry has powers of control over dock and harbour authorities and, through the Electricity Commission, over joint electricity authorities and other authorised electricity undertakers. It has, also, certain limited powers of control over the railway companies. The Traffic Commissioners and the licensing authorities under the Road and Rail Traffic Act, 1933, act under general directions of the Minister, but otherwise exercise independent quasi-judicial functions. The Ministry is connected with the Railway Rates Tribunal.

## 22. *The Treasury*

The office of Lord High Treasurer is in commission and is exercised in theory by a Board which, however, never meets. The Prime Minister, as First Lord of the Treasury, is a member of this Board, and certain of his decisions are therefore technically the decisions of the Lords Commissioners, and certain subordinate departments of the Treasury are in fact under his control. The Treasury as ministry of finance is, however, under the control of the Chancellor of the Exchequer, a Cabinet minister. He is assisted by the Financial Secretary to the Treasury, who is the most important of the junior ministers, and who is occasionally a member of the Cabinet. The Parliamentary Secretary to the Treasury is Chief Government Whip in the House of Commons, and the Junior Lords are also Government Whips. In substance, therefore, these have nothing to do with Treasury business, except that two Lords of the Treasury are required by statute to take any formal decision of the Treasury Board.

The Treasury is in control of a number of subordinate offices, most of which have either been established by statute or, being established under prerogative powers, have statutory functions. The Paymaster-General's Office frequently has a junior minister at its head. It is, however, effectively under Treasury control. The Board of Inland Revenue and the Board of Customs and Excise are "civil service" boards concerned with the collection of direct and indirect taxation, respectively, under Treasury control. The Crown Lands Commission is a somewhat similar body controlling Crown lands other than those of the Duchies of Lancaster and Cornwall. It is, however, connected with the Ministry

of Agriculture and Fisheries, and its vote appears in Class VI of the Civil Estimates.

Technical departments under the control of the Treasury are the King's Proctor's Office, the Office of the Procurator-General and Solicitor to the Treasury, the King's Remembrancer's Office, the Parliamentary Counsel's Office, the Central Registry Office for Friendly Societies, the Royal Mint, and the Office of Government Actuary. The heads of these offices are all civil servants, though some of them have separate votes. The Cabinet Office, the Office of the Committee of Imperial Defence, and the Economic Advisory Council are under the direct control of the Prime Minister.

The Treasury appears to have one permanent advisory committee only, the Import Duties Advisory Committee.

Associated with the Treasury is a number of semi-independent bodies. These include the Development Commission, the Public Works Loan Commission, the Forestry Commission, the National Debt Office, the National Savings Committee, the Exchequer and Audit Department, the Civil Service Commission, the University Grants Committee, and the Trustee Savings Bank Investigation Committee. Some of these are so nearly independent that they can hardly be regarded as subject to control. The Bank of England is a semi-public institution which, in respect of some of its activities, and some only, is subject to Treasury control.

### 23. *The War Office*

The War Office is under the control of a Secretary of State who is a member of the Cabinet and who is assisted by two junior ministers, the Parliamentary Under-Secretary of State and the Financial Secretary to the War Office. The Army is controlled by the Army Council, which consists of the three ministers, the Chief of the Imperial General Staff, the Adjutant-General to the Forces, the Quartermaster-General to the Forces, the Master-General of the Ordnance, the Director-General of Munitions Production, and the Permanent Under-Secretary of State. But the Order in Council of December 17th, 1931, like its predecessors, places on the Secretary of State responsibility to the Crown and to Parliament for the business of the Council. The Secretary of State can, therefore, override the Council.

### 24. *The Office of Works*

The Office of Works is concerned with the building, maintenance and furnishing of Government buildings. It is governed in theory by a



Commission and in fact by the First Commissioner, who is usually a member of the Cabinet. It has powers of control over the National Maritime Museum.

## II. DEPARTMENTS REPRESENTED IN PARLIAMENT BUT NOT BY MINISTERS

### 1. *The House of Lords Offices*

The Offices of the House of Lords are controlled by a Select Committee of the House. Since the authority for expenditure is necessarily derived from Parliamentary grant, the amount of the vote must be agreed by the Treasury. The Offices are six in number, namely, the Departments of the Lord Chancellor, Chairman of Committees, Clerk of the Parliaments, Gentleman Usher of the Black Rod, Librarian, and Lord Great Chamberlain.

### 2. *The House of Commons Offices*

The House of Commons Offices are controlled by a committee of the House established by statute. As in the case of the House of Lords Offices, Treasury sanction for expenditure is necessary.

### 3. *The Charity Commission*

The Charity Commission was established under statutory authority to inquire into the condition and management of charities and to exercise other statutory functions in respect of charities. Three of the commissioners are paid officers who hold office during good behaviour, and they are disqualified from sitting and voting in the House of Commons. The fourth commissioner is unpaid, he holds office during pleasure, and he is not disqualified from sitting and voting in the House of Commons. He is, usually, a member of the House of Commons, and questions may be addressed to him. He is not, however, a minister.

### 4. *The Ecclesiastical and Church Estates Commission*

This Commission is a permanent body consisting of the archbishops, bishops, three deans, certain Ministers and judges, and twelve nominated laymen. It is responsible for the administration of large estates and the application of the income under statutory powers for increasing the endowments of parochial benefices and in other ways promoting the work and efficiency of the Church of England. Most of the work is done by the Estates Committee, consisting of three Church Estates Commissioners. The first and second Commissioners are appointed by

the Crown, and the second is usually a member of Parliament supporting the Government, who answers questions in the House of Commons but is not a minister.

#### 5. *The Forestry Commission*

The Forestry Commission is a statutory body established for the purpose of promoting the interests of forestry, the development of afforestation, and the production and supply of timber in Great Britain. Among its members are usually members of Parliament drawn from the three major parties. One of these answers questions in the House of Commons, but he is not a minister.

### III. DEPARTMENTS NOT REPRESENTED IN PARLIAMENT

To compile a list of these bodies is not possible. The information given in Part I of this Appendix shows that there is a large number of authorities loosely connected with the various Departments under responsible ministers. Such ministers are responsible only so far as they have powers of control, and those powers vary from the almost complete powers possessed by the Ministry of Health over the Board of Control and of the Ministry of Transport over the Electricity Commission to the exiguous control of the Ministry of Transport over the Central Electricity Board and the London Passenger Transport Board, of the Post Office over the British Broadcasting Corporation, and of the Treasury over the Bank of England. The Treasury necessarily has control over expenditure by any Department whose estimates are presented to Parliament. For this reason among others the salaries of the judges, of the Comptroller and Auditor-General, and of the members of the Unemployment Assistance Board, are not voted annually but are charged on the Consolidated Fund. The King's Civil List and the charge of the National Debt are similarly provided for. Over other items of expenditure, including the rest of the cost of administration of the Exchequer and Audit Department, the Supreme Court of Justice, the Unemployment Assistance Board, and the National Debt Office, the Treasury has control. The estimates of the following bodies, which may be regarded as to some extent freed from departmental control, are brought before Parliament:

British Museum, Charity Commission, Civil Service Commission, Coal Mines Investigation Committees, Crown Lands

Commission, National Debt Office, Développement Commission, Exchequer and Audit Department, Royal Fine Art Commissions, Forestry Commission, Friendly Societies' Registry, House of Commons Offices, House of Lords Offices, Imperial War Graves Commission (though for the most part this is in the form of a grant in aid), Supreme Court of Judicature, Court of Justiciary (Scotland), Public Works Loan Commission, London Museum, London Passenger Transport Arbitration Commission, National Maritime Museum, Milk Marketing Boards, National Gallery and National Galleries (Scotland), National Insurance Audit Department, National Library (Scotland), National Portrait Gallery, National Savings Committee, Pensions Appeal Tribunals, Railway and Canal Commission, Road and Rail Traffic Act Appeal Tribunal, Scottish Land Court, Court of Session (Scotland), Sheriffs Courts (Scotland), Unemployment Insurance Umpire and Courts of Referees, Unemployment Assistance Board, Wallace Collection, Agricultural Wages Boards, Imperial War Museum.

Many other semi-independent authorities appear in the Estimates, but only because of grants in aid. Since these involve no Treasury control, no additional element of control arises from this fact.

In addition to those already mentioned as associated with Departments under ministerial control, or represented in Parliament by persons who are not ministers, the following public offices may be noted:

1. The Duchy of Cornwall. This office is under the control of the Prince of Wales for the time being or, if there is no Prince of Wales, of the King.
2. The County Palatinate of Durham.
3. The Heralds' College, the Court of the Lord Lyon, and the Irish Heralds' College. The officers of these bodies are paid by fees, some of which, however, come from the Government and therefore appear in the Estimates.
4. The Royal Fine Art Commissions. These are advisory only. Their expenses appear in the Estimates.
5. The Land Values Reference Committee, the Coal Mines (Reference) Committee, the Railway Assessment Authorities, the Railway and Canal Commission and the Scottish Law Courts.
6. Queen Anne's Bounty. This body administers property and therefore does not appear in the Estimates.

7. Trinity House. This body has statutory functions, but does not appear in the Estimates.
8. The General and Special Commissioners of Income Tax.
9. The Scottish Ecclesiastical Commission.
10. The National Radium Commission. This body was established by charter and received a non-recurring grant from public funds.

#### APPENDIX IV

### The Prerogative of Dissolution

#### DISCUSSIONS ON THE HOME RULE BILL, 1913

The following material is taken from *The Times* for September, 1913. The Home Rule Bill had been passed by the House of Commons in two successive Sessions and rejected by the House of Lords in each of those Sessions. The discussions below took place before the beginning of the third Session, during which the Home Rule Bill became law under the Parliament Act, 1911.

##### 1. *Mr George Cave to The Times*

The passage of the Home Rule Bill in its present form means the division of the kingdom, the impoverishment of Ireland, the use of British troops to dragoon a part of that country into submission to a new authority, the probability of that most bitter and lamentable of all forms of conflict—civil war. It must profoundly affect the future of Great Britain as well as of every part of Ireland. Is it so foolish to suggest that, before action such as this is taken in the name of the people of England and Scotland, they should be asked whether they assent to it or not? I confess that, founding myself on my estimate of the character of the Prime Minister and some of his colleagues rather than on any spoken word, I have hitherto inclined to the belief that before making themselves answerable to the country and to history for consequences so tremendous they would themselves desire to have the plain sanction of a direct popular vote.

Mr Birrell seems to suggest that an election is now unnecessary because Home Rule was a "live" issue at the election of December, 1910.... I am convinced that in every British constituency such consideration as any elector may then have given to Home Rule was clouded, and in most cases overshadowed, by his views on the question of the House of Lords. Why then should we not make sure?

But if Ministers prove obdurate, what is the prospect? It is not a pleasant one for those who desire a constitutional solution of the crisis; but may we not hope that in that event the Sovereign will exercise his undoubted right and dissolve Parliament before the commencement of

the next Session? A refusal of Royal Assent to the Home Rule Bill after its third passing might no doubt be represented as a challenge to the democracy; but no such reproach could be levelled against a decision of the Sovereign to satisfy himself, before the House of Commons, is finally committed to a decision which must change the history of his kingdom, that that House does indeed represent the democracy of to-day.

(*The Times*, Sept. 6th, 1913.)

2. *The Times leading article, Sept. 8th, 1913*

(After quoting Mr Cave's letter.) A section of the Unionist Party are advocating this very "challenge to democracy" by canvassing a proposal for petitioning the King to refuse his assent to the Home Rule Bill after its third passage under the Parliament Act.

Such a proposal does not bear analysis. It originated in irresponsible quarters and it betrays its amateur origin in a complete ignorance of our legal and constitutional usage. But it at least serves to show the unwisdom of the Government in remaining silent in face of the unswerving attitude of Ulster. The alternative suggestion put forward by Mr Cave, coming as it does from a politician of influence and standing, will receive more consideration. The author of the suggestion admits that his proposal is hardly constitutional; but he falls back on the "undoubted right" of the Sovereign to dissolve Parliament before the next Session begins. Legally there is no question that under the Constitution there are certain reserved rights of the Crown; but they are atrophied by long disuse. In spite of this, Mr Cave thinks that the policy of the Government justifies their reassertion after the lapse of centuries. It is, however, in our judgment, inconceivable that the Sovereign should contemplate a step which might lead to an apparent disagreement between the occupant of the Throne and the majority of his people. Unionists must face the possibility, however remote they believe it to be, of another reverse at the next general election. A dissolution of Parliament by an exercise of the Royal Prerogative, *proprio motu regis*, might be followed by a vindication at the polls of those very Ministers whose advice had been set aside. The proposal, in fact, has only to be stated with its implications for its constitutional absurdity to be revealed. It is a first principle of our Constitution that the King acts solely on the advice of his Ministers. Ministers, therefore, must bear on their own shoulders complete responsibility for the advice they give. It is their duty to give the Sovereign certain assurances, on which he

acts, and for which he is justified in asking before giving the Royal Assent. If Mr Asquith, whose knowledge of constitutional practice is perhaps unrivalled, is unable to give such assurances, His Majesty will no doubt dissolve Parliament on the advice of his Ministers.

### 3. *Sir William R. Anson to The Times*

I do not think that those who tell us what, in their opinion and under existing circumstances, the King should or can do always bear in mind the twofold consideration of present facts and constitutional principles.

The facts are these. The Government have taken advantage of a combination of groups in the House of Commons to deprive the Second Chamber of its constitutional right to bring about an appeal to the people on measures of high importance which have never been submitted to the consideration of the electorate. While this part of our Constitution is in abeyance they are pressing on legislation which will shortly lead to civil war.

Our only safeguard against such disaster is to be found in the exercise of the prerogatives of the Crown. I am not ready to admit that, under such circumstances, these prerogatives have been atrophied by disuse: but, on the other hand, they can be exercised only under certain conditions which those who write on the subject are apt to ignore.

For every public act of the King his Ministers must accept responsibility. If, therefore, the King should desire to dissolve Parliament before the Irish and Welsh Bills enter upon their third session, and if the Government are of the same opinion, the prerogative of dissolution would be exercised in the ordinary course. If not, it would be necessary to ascertain beforehand whether an alternative Ministry was prepared to accept the responsibility of a dissolution.

Mr Caye is doubtless right in holding that a dissolution would be a milder exercise of the prerogative than the refusal of the Royal Assent to a Bill: but he might have gone on to note that it might be easier to find Ministers who would accept responsibility for the one than for the other.

It really comes to this, that if the King should determine, in the interests of the people, to take a course which his Ministers disapprove, he must either convert his Ministers to his point of view, or, before taking action, must find other Ministers who agree with him.

(*The Times*, Sept. 10th, 1913.)

4. *Lord Hugh Cecil to The Times*

There is surely some confusion of thought in your comments on Mr Cave's letter. It is certainly an undisputed rule of our Constitution that the Sovereign must never act upon his own responsibility—that is, he must always have advisers who will bear the responsibility of his acts. But this does not mean that he must always automatically accept the advice of those who are his Ministers at a given moment. What is constitutional is determined in our country by precedent and by authority; and the theory that the Sovereign must act automatically will find no support in precedent, nor, I think, from any authority of acknowledged weight. The doctrine—sustained, I believe, both by precedent and authority—is that the Sovereign may refuse the advice of his Ministers, though that refusal should involve their resignation, and may even (in an extreme case) dismiss his Ministers; but that these powers are in practice closely restricted by the condition that he must find advisers to bear the responsibility of his action who have the confidence of the House of Commons, or can obtain that confidence after a general election.

This doctrine was acted upon in 1784, 1801, 1807, 1832, 1834, and 1839; and it was also fully and generally recognized in 1831, for no one doubted that King William might, if he had pleased, have refused the famous dissolution of that year. It is said, too, that at a late period of Queen Victoria's reign she contemplated dissent from her Ministers, but was otherwise advised by the then leader of the Opposition. Precedent therefore clearly upholds as constitutional the right of the Sovereign to reject the advice of his Ministers if he can find other advisers who will bear the responsibility of that rejection, and if those other advisers have or can obtain the confidence of the House of Commons....

This relates to the constitutional right of the Sovereign. In what circumstances it may be wise for the Sovereign to exercise his constitutional right is quite another question. What is constitutional is not always judicious, as reference to the precedents of 1801 and 1834 sufficiently proves. But what may briefly be called the "automatic" theory is a serious misrepresentation of the Constitution calling for protest quite apart from what may or may not be expedient at the present time. For that theory mistakes the underlying principle of which the conventions of the Constitution are the expressions. That principle is that there must be no conflict between the King and his people, nor consequently between the King and a House of Commons which correctly represents his people. But there is nothing unconstitutional in



a disagreement between the King and his Ministers except in so far as it implies a disagreement with the House of Commons and ultimately with the people. The constitutional rules which I have endeavoured to state do three things: they absolutely prevent a conflict between the King and the people; they prevent a conflict between the King and the House of Commons except in the case where both he and experienced advisers see reason to doubt that the House of Commons really represents the people; and in the event of such a conflict they require the King to protect the dignity of his office from all controversy or censure by interposing a ministry to bear the whole responsibility for what has been done. But they do not prevent, because there is no object in preventing, a disagreement between the King and his Ministers, apart from the House of Commons or the people. The "automatic" theory would invest the Ministry as such with a sanctity which is as useless and unrelated to any constitutional principle as it is unsupported by precedent or authority.

(*The Times*, Sept. 10th, 1913.)

#### 5. *Professor J. H. Morgan to The Times*

Any proposal coming from Mr Cave is entitled to respectful consideration. But I do not see how any one who considers impartially his suggestion that the Sovereign should dissolve Parliament before the commencement of next Session can question the weighty arguments which you advance against it in your issue of to-day. And there are others. Such a course would raise greater difficulties than the one solved—if, indeed, it did solve it. His Majesty's decision would first have to be communicated to his Ministers, and they might then regard themselves as confronted with the painful duty of resigning as a protest against it. The Sovereign cannot act alone, and such an independent decision on his part would almost inevitably be equivalent to a dismissal of his Ministers, who surely could not be expected to go to the country under circumstances which made it plain to the electorate that they did not accept responsibility for the dissolution. The conduct of an election held under these circumstances and its effect on the position of the Sovereign would be such as no loyal subject could contemplate without misgiving. Moreover, such a claim, once exercised by the Sovereign, however exceptional or imperative the circumstances might seem to be, would seriously compromise any future exercise of the right of dissolution by a Ministry under quite normal circumstances. No dissolution in future would be free from ambiguity, and speculation as to the degree of responsibility of the Sovereign would be a feature of every election. The

right of dissolution, regarded as a Ministerial right, owes its existence to a general recognition of the Sovereign's immunity from responsibility for its exercise; until that immunity was achieved any dissolution was a source of grave anxiety to the Sovereign as carrying with it the implication that not only was the Ministry defeated, but the Crown compromised or, to use the language of Queen Victoria in the early days of her reign, "affronted".

Moreover, it seems extremely doubtful whether either party could if it would—or, indeed, would if it could—confine the issue to Home Rule. Would there not be a considerable danger of a presumption—even if Unionist candidates scrupulously refused to raise it—that the Sovereign disapproved of the Parliament Act, and if of the Parliament Act, why not of the measures already passed into law under its ultimate sanction—measures for which, be it remembered, the House of Lords, by declining (deplorably, as I think) to amend them, had repudiated all responsibility as passed under a "suspended Constitution" or a "revolutionary interregnum"? In that case there would be no limits to the implication of the Sovereign in the current political controversies.

(*The Times*, Sept. 10th, 1913.)

#### 6. *Professor A. V. Dicey to The Times*

Allow me to express my complete agreement with Sir William Anson's masterly exposition of the principles regulating the exercise of the prerogative of dissolution. On this matter I write with some little confidence. My "Law of the Constitution" (7th edition), pp. 428-434, contains an examination of the constitutional doctrine as to the dissolution of Parliament. This doctrine has been repeated and defended during the last 28 years in every edition of my book. My opinion as to the occasions on which a dissolution may rightly take place has, as far as I know, never been assailed and assuredly has never been controverted by any writer of authority. Let me add to the lucid statement of constitutional law by my friend Sir William Anson the following observations which at the present moment deserve attention:

1. A dissolution of Parliament before the beginning of the next Session by the King in conformity with the advice of a Minister ready to assume the responsibility for this course of action, would be amply justified by the precedents of 1784 and 1834. No statesman need be ashamed to follow the example of Pitt or of Peel. One may add that the whole current of modern constitutional custom involves the admission

that the final decision of every grave political question now belongs, not to the House of Commons, but to the electors as the representatives of the nation.

2. A dissolution before the commencement of the next Session, which will be the third Session of the Home Rule Bill, may take place, and ought to take place, with the assent of Mr Asquith and his colleagues. Such a dissolution will not be the sacrifice of the policy of Home Rule; it will not even be the sacrifice of the present Home Rule Bill. If the Government obtain after the dissolution a substantial majority in the House of Commons they will still, under the Parliament Act, be able to present the Bill to the King for his acceptance without obtaining the consent of the House of Lords (see Parliament Act, section 2).

3. A dissolution after the beginning of the next Session, but before the Home Rule Bill has become the Home Rule Act, will be fatal to the existing Home Rule Bill, and this for a perfectly plain reason. In order that the Parliament Act may apply to the Bill the Bill must be passed by the House of Commons and rejected by the House of Lords in each of three "successive" Sessions. But if a dissolution takes place during the third Session, but before the Bill has become an Act, it can never be passed and rejected in three such successive Sessions. If a dissolution does not take place before the beginning of the next Session the destruction of the Home Rule Bill by a dissolution which may take place during the next Session will be due to the obstinacy of Ministers who will have refused to give ear in due time to the demand of the nation that the union between England and Ireland shall not be in effect repealed until the policy of Home Rule shall have obtained the direct and indubitable sanction of the electorate.

4. Rumour imputes to the Premier the intention of passing the Home Rule Act, 1914, say in June next, and advising a dissolution during the months which must elapse before the Act will have come into full operation. The recklessness and fatuity of such a policy render its adoption all but incredible. This sham appeal to the people will, in the eyes of Unionists, whether in England or in Ireland, involve the addition of insult to injustice. A man of Mr Asquith's calmness and sense cannot wish to redouble the chance of civil war; he has apparently rejected the idea of submitting the Home Rule Bill to a Referendum; he surely cannot think that Englishmen or Irishmen will tolerate that parody of a Referendum which, under the name of a plebiscite, has been invented by French Jacobinism and has been performed again and again by French Imperialism.

5. The question is sometimes now raised whether during the present political crisis the King could rightly or wisely refuse assent to the Home Rule Bill after it should for a third time have been passed by the House of Commons and rejected by the House of Lords. This is happily a purely academic inquiry on which I decline now to enter. Every advantage by way of appeal to the electors, in consequence of the exercise of the so-called Royal veto, can be far better and more regularly obtained by a dissolution of Parliament. Mr Balfour has struck the right note. The safety and the prosperity of the United Kingdom absolutely demand a speedy dissolution. As regards the Veto itself, I am well content to adopt the language of Burke: -

“The King’s negative to Bills is one of the most undisputed of the Royal prerogatives, and it extends to all cases whatsoever. I am far from certain that if several laws which I know had fallen under the stroke of that sceptre the public would have had a very heavy loss. But it is not the propriety of the exercise which is in question. Its repose may be the preservation of its existence, and its existence may be the means of saving the Constitution itself on an occasion worthy of bringing it forth.”

(*The Times*, Sept. 15th, 1913.)

## APPENDIX V

### Biographical and Bibliographical Notes

ABERDEEN, George Hamilton-Gordon, fourth Earl of (1784-1860); Scottish representative peer, 1806-14; ambassador-extraordinary at Vienna, 1813; cr. Viscount Gordon, 1814; Chancellor of the Duchy of Lancaster in Wellington's Cabinet and afterwards Foreign Secretary, 1828-30; Secretary of State for War and the Colonies in Peel's Cabinet, 1834-5; Foreign Secretary in Peel's Cabinet, 1841-6; Prime Minister, 1852-5.

*The Life of George, Fourth Earl of Aberdeen*, by Lady Frances Balfour, 2 vols. (1922).

*The Earl of Aberdeen*, by Lord Stanmore (1893).

ADDERLEY, Sir Charles Bowyer, *see* NORTON

ADDISON, Christopher (b. 1869); Liberal M.P., 1910-22; Labour M.P., 1929-31 and 1934-5; Parliamentary Secretary to the Board of Education in Asquith's Government, 1914-15; Parliamentary Secretary to the Ministry of Munitions in Asquith's Coalition Government, 1915-16; Minister of Munitions, 1916-17, Minister of Reconstruction, 1917-19, President of the Local Government Board, 1919, Minister of Health, 1919-21, and Minister without portfolio, all in Lloyd George's Government; Parliamentary Secretary to the Ministry of Agriculture in MacDonald's Government, 1929-30; Minister of Agriculture and Fisheries in MacDonald's Cabinet, 1930-31.

*Four and a Half Years*, by the Rt Hon. Christopher Addison, 2 vols. (1934).

ALBERT, Francis Charles Augustus Emmanuel, Prince Consort (1819-1861); m. Queen Victoria, 1840.

*The Life of His Royal Highness the Prince Consort*, by Theodore Martin, 5 vols. (1877-80).

*The Prince Consort and his Brother*, edited by Hector Bolitho (1933).

ALTHORP, Viscount, *see* SPENCER, John Charles, Earl

ARGYLL, George Douglas Campbell, eighth Duke of (1823-1900); succeeded as Marquess of Lorne, 1837; succeeded to Dukedom,

1847; Lord Privy Seal in Aberdeen's Cabinet, 1853-5; Postmaster-General in Palmerston's Cabinet, 1855-8; Lord Privy Seal in the same Cabinet, 1859-60; Postmaster-General, 1860; Lord Privy Seal, 1860-66; Secretary of State for India in Gladstone's Cabinet, 1868-74; Lord Privy Seal, 1880-81; Liberal Unionist after 1886.

*George Douglas, Eighth Duke of Argyll: Autobiography and Memoirs*, 2 vols. (1906).

ARNOLD-FORSTER, Hugh Oakeley (1855-1909); Unionist M.P., 1892-1909; Parliamentary Secretary at the Admiralty in Lord Salisbury's Government, 1901-3; Secretary of State for War in Balfour's Cabinet, 1903-5.

*The Right Honourable Hugh Oakeley Arnold-Forster*, A Memoir, by his Wife (1910).

ASQUITH, Herbert Henry, *see* OXFORD AND ASQUITH, Earl of

BALDWIN, Stanley (b. 1867); Conservative M.P. since 1908; Financial Secretary to the Treasury in Lloyd George's Government, 1917-21; President of the Board of Trade in Lloyd George's Cabinet, 1921-2; Chancellor of the Exchequer in Bonar Law's Cabinet, 1922-3; Prime Minister, 1923-4 and 1924-9; Lord President of the Council in MacDonald's Cabinet, 1931-5; Prime Minister since 1935.

BALFOUR, Arthur James, first Earl (1848-1930); Conservative M.P. 1874-1922; Private Secretary to Lord Salisbury, 1878-80; President of Local Government Board, 1885-6, Secretary for Scotland, 1886-7, Chief Secretary for Ireland, 1887-91, and First Lord of the Treasury and Leader of the House of Commons, 1891-2 and 1895-1902, in Lord Salisbury's Cabinets; Prime Minister, 1902-6; First Lord of the Admiralty in Asquith's Cabinet, 1915-16; Foreign Secretary in Lloyd George's Government, 1916-19; Lord President of the Council in Lloyd George's Cabinet, 1919-22, and in Baldwin's Cabinet, 1925-9; *cr.* Earl, 1922.

*Chapters of Autobiography*, by Arthur James, first Earl Balfour (1930).

BEACH, Sir Michael Edward Hicks, *see* ST ALDWYN, first Earl

BEACONSFIELD, Benjamin Disraeli, first Earl of (1804-1881); Conservative M.P., 1837-76; a leader of the Protectionists, 1845-50; Chancellor of the Exchequer and Leader of the House of Com-

mons in Derby's Cabinet, 1852; led Conservative Opposition in House of Commons, 1852-8; Chancellor of the Exchequer and Leader of the House of Commons in Derby's Cabinet, 1858-9; in Opposition, 1859-66; Chancellor of the Exchequer and Leader of the House of Commons in Derby's Cabinet, 1866-8; Prime Minister, 1868; in Opposition, 1868-73; Prime Minister, 1874-80; cr. Earl of Beaconsfield, 1876.

*The Life of Benjamin Disraeli, Earl of Beaconsfield*, by W. F. Monypenny and O. E. Buckle, 6 vols. (1910-20). [The references are to the new edition in 2 vols. (1929).]

*Lord Beaconsfield's Correspondence with his Sister*, 1832-1852, 2nd edition (1886).

*The Letters of Disraeli to Lady Bradford and Lady Chesterfield*, edited by the Marquess of Zetland, 2 vols. (1929).

*Lord George Bentinck: A Political Biography*, by the Rt Hon. B. Disraeli, M.P., new edition (1858).

BEAVERBROOK, William Maxwell Aitken, first Baron (b. 1879); Conservative M.P., 1910-16; close friend of Mr Bonar Law; cr. Baron, 1917; Chancellor of the Duchy of Lancaster and Minister of Information in Lloyd George's Government, 1917; newspaper proprietor.

*Politicians and the War*, by Lord Beaverbrook, 2 vols. (1928, 1932).

BENTINCK, Lord George (1802-1848); Tory M.P., 1826-48; led Protectionists in opposition to Peel, 1846-7.

*Lord George Bentinck: A Political Biography*, by the Rt Hon. B. Disraeli, M.P., new edition (1858).

BIGGE, *see* STAMFORDHAM

BIRKENHEAD, Frederick Edwin Smith, first Earl of (1872-1930); Conservative M.P., 1906-19; Solicitor-General, 1915, and Attorney-General, 1915-19, in Asquith's and Lloyd George's Governments; Lord Chancellor in Lloyd George's Cabinet, 1919-22; Secretary of State for India in Baldwin's Cabinet, 1924-8; cr. Baron, 1919, Viscount, 1921, Earl, 1922.

*Frederick Edwin, Earl of Birkenhead*, by his son, the Earl of Birkenhead (1933, 1934).

BRENTFORD, William Joynson-Hicks, first Viscount (1865-1932); Conservative M.P., 1908-29; Parliamentary Secretary, Overseas Trade Department, in Bonar Law's Government, 1922-3;

Postmaster-General in Baldwin's Government, 1923; Financial Secretary to the Treasury in Baldwin's Cabinet, 1923, and Minister of Health, 1923-4; Home Secretary in Baldwin's Cabinet, 1924-9; cr. Viscount, 1929.

*Jix—Viscount Brentford*, by H. A. Taylor (1933).

BROUGHAM AND VAUX, Henry Peter, first Baron (1778-1868); Whig M.P., 1810-30; Lord Chancellor in Melbourne's Cabinet, 1830-34; cr. Lord Brougham of Vaux, 1830.

*The Life and Times of Henry, Lord Brougham*, written by himself, 3 vols. 2nd edition (1871).

*Lord Brougham and the Whig Party*, by A. Aspinall (1927).

BRYCE, James, first Viscount (1838-1922); Liberal M.P., 1880-1907; Under-Secretary of State for Foreign Affairs in Gladstone's Government, 1886; Chancellor of the Duchy of Lancaster, 1892-4, and President of the Board of Trade, 1894-5, in Gladstone's and Rosebery's Cabinets; Chief Secretary for Ireland in Campbell-Bannerman's Cabinet, 1905-7; Ambassador at Washington, 1907-13; cr. Viscount, 1914.

*James Bryce*, by H. A. L. Fisher, 2 vols. (1927).

CAMPBELL-BANNERMAN, Sir Henry (1836-1908), Liberal M.P., 1868-1908; Financial Secretary to the War Office in Gladstone's Governments, 1871-4 and 1880-82; Parliamentary Secretary to the Admiralty, 1882-4; Chief Secretary for Ireland, 1884-5; Secretary of State for War in Gladstone's Cabinet, 1886, and in Gladstone's and Rosebery's Cabinets, 1892-5; Leader of the Liberal Party in the House of Commons, 1899-1908; Prime Minister, 1905-8.

*The Life of The Right Hon. Sir Henry Campbell-Bannerman*, by J. A. Spender, 2 vols. (1923).

CARSON, Sir Edward Henry, Baron (Life Peer), (1854-1935); Conservative M.P., 1892-1921; Solicitor-General for Ireland, 1892; Solicitor-General in Salisbury's and Balfour's Governments, 1900-6; Attorney-General in Asquith's Coalition Government, 1915; First Lord of the Admiralty, 1917; Minister without portfolio in the War Cabinet, 1917-18; Lord of Appeal in Ordinary, 1921-9.

*The Life of Lord Carson*, vol. II, by Ian Colvin (1934).



CAVE, George, first Viscount (1856-1928); Conservative M.P., 1906-18; Solicitor-General in Asquith's Coalition Government, 1915-16; Home Secretary in Lloyd George's Government, 1916-19; Lord of Appeal in Ordinary, 1919-22; Lord Chancellor in Bonar Law's and Baldwin's Cabinets, 1922-4, and Baldwin's Cabinet, 1924-8.

*Lord Cave: A Memoir*, by Sir Charles Mallet (1931).

CHAMBERLAIN, Sir Austen (b. 1863); Conservative M.P. since 1892; Civil Lord of the Admiralty, 1895 and 1900, Financial Secretary to the Treasury, 1900-2, and Postmaster-General, 1902-3, in Salisbury's Government. Chancellor of the Exchequer in Balfour's Cabinet, 1903-6; Secretary of State for India in Asquith's Cabinet, 1915-17; Member of the War Cabinet, 1918; Chancellor of the Exchequer, 1919-21, and Lord Privy Seal and Leader of the House of Commons, 1921-2, in Lloyd George's Cabinet; Secretary of State for Foreign Affairs in Baldwin's Cabinet, 1924-9; First Lord of the Admiralty in MacDonald's National Cabinet, 1931.

*Down the Years*, by the Rt Hon. Sir Austen Chamberlain (1935).

CHAMBERLAIN, Joseph (1836-1914); Liberal M.P., 1876-86; Liberal Unionist M.P., 1886-1906; President of the Board of Trade in Gladstone's Cabinet, 1880-85; President of Local Government Board in Gladstone's Cabinet, 1886, but resigned in consequence of Home Rule Bill and went into opposition; Secretary of State for the Colonies in Salisbury's and Balfour's Cabinets, 1895-1903; resigned office to conduct tariff reform agitation, 1903.

*The Life of Joseph Chamberlain*, by J. L. Garvin, 3 vols. (1932-5). [Other volumes to follow.]

CHILDERS, Hugh Culling Eardley (1827-1896); Liberal M.P., 1860-86; Financial Secretary to the Treasury in Russell's Government, 1865-6; First Lord of the Admiralty in Gladstone's Cabinet, 1868-71; Chancellor of the Duchy of Lancaster, 1872-3; Secretary of State for War in Gladstone's Cabinet, 1880-82; Chancellor of the Exchequer, 1882-5; Home Secretary, 1886.

*The Life and Correspondence of the Rt Hon. Hugh C. E. Childers*, by Lieut.-Col. Spencer Childers, 2 vols. (1901).

CHURCHILL, Lord Randolph Henry Spencer (1849-1894); Conservative M.P., 1874-94; member of "Fourth Party"; Secretary of

State for India in Salisbury's Cabinet, 1885-6; Chancellor of the Exchequer and Leader of the House of Commons in Salisbury's Cabinet, 1886; resigned over Estimates, 1886.

*Lord Randolph Churchill*, by Winston Spencer Churchill, M.P., 2 vols. (1906).  
*Lord Randolph Churchill*, by the Earl of Rosebery [in *Miscellanies*, vol. 1].

CHURCHILL, Winston Leonard Spencer (b. 1874); Conservative M.P., 1900-3; Liberal M.P., 1903-22; Conservative M.P., since 1924; Under-Secretary of State for the Colonies in Campbell-Bannerman's Government, 1906-8, President of the Board of Trade, 1908-10, Home Secretary, 1910-11; and First Lord of the Admiralty, 1911-15, and Chancellor of the Duchy of Lancaster, 1915, in Asquith's Cabinets; Secretary of State for War and for Air, 1918-21, and for the Colonies, 1921-2, in Lloyd George's Cabinet; Chancellor of the Exchequer in Baldwin's Cabinet, 1924-9.

*The World Crisis*, by Winston S. Churchill, 5 vols. (1923-8).

CLARENDON, George William Frederick Villiers, fourth Earl of (1800-1870); diplomatic service, 1820-39; succeeded to Earldom, 1839; Lord Privy Seal in Melbourne's Cabinet, 1839-41; President of the Board of Trade, 1846, and Lord-Lieutenant of Ireland, 1847-52, in Russell's Cabinet; Foreign Secretary in Aberdeen's and Palmerston's Cabinets, 1853-8; Chancellor of the Duchy of Lancaster, 1864; Foreign Secretary in Russell's Cabinet, 1865-6; Foreign Secretary in Gladstone's Cabinet, 1868-70.

*The Life and Letters of George William Frederick, Fourth Earl of Clarendon*, by the Rt Hon. Sir Herbert Maxwell, Bart., 2 vols. (1913).

CLARKE, Sir Edward George (1841-1931); Conservative M.P., 1880-1906; Solicitor-General in Salisbury's Government, 1886-92.

*The Story of My Life*, by Sir Edward Clarke (1923).

COBDEN, Richard (1804-1865); Liberal M.P., 1841-57, 1859-64; a leader of the Anti-Corn-Law League, negotiated commercial treaty with France, 1859-60.

*The Life of Richard Cobden*, by John Morley, 2 vols. (1879).

*Richard Cobden: the International Man*, by J. A. Hobson (1918).

CONSORT, Prince, *see* ALBERT

COOK, Sir Edward Tyas (1857-1919); editor, *Pall Mall Gazette*, 1890-92; editor, *Westminster Gazette*, 1893-6; editor *Daily News*, 1895-1901; author of *Life of Delane* (q.v.).

*Sir Edward Cook, K.B.E.: A Biography*, by J. Saxon Mills (1921).

CRANBROOK, Gathorne Gathorne-Hardy, first Earl of (1814-1906); Conservative M.P., 1856-78; Parliamentary Under-Secretary of State for Home Affairs in Derby's Government, 1858-9; President of the Poor Law Board and afterwards Home Secretary in the Derby-Disraeli Cabinet, 1866-8; Secretary of State for War in Disraeli's Cabinet, 1874-8; cr. Viscount Cranbrook, 1878; Secretary of State for India in Disraeli's Cabinet, 1878-80; Lord President of the Council in Salisbury's Governments, 1885-92; cr. Earl of Cranbrook, 1892.

*Gathorne Hardy, First Earl of Cranbrook, A Memoir*, edited by the Hon. Alfred E. Gathorne-Hardy, 2 vols. (1910).

CROMER, Evelyn Baring, first Earl of (1841-1917); army, 1855-67; first Commissioner in Egypt, 1877-9; British controller in Egypt, 1879; Financial Member of Viceroy's Council in India, 1880-83; British Agent and Consul-General in Egypt, 1883-1907; cr. Baron Cromer, 1892; Viscount, 1899; Earl 1901.

*Lord Cromer*, by the Marquess of Zetland (1932).

CURZON of Kedleston, George Nathaniel Curzon, first Marquess (1859-1925); Conservative M.P., 1886-98; Under-Secretary of State for India in Salisbury's Government, 1891-2; Under-Secretary of State for Foreign Affairs in Salisbury's Government, 1895-8; Viceroy and Governor-General of India, 1899-1905; succeeded as Baron Scarsdale, 1898; Viscount Scarsdale, 1911, and Earl Curzon of Kedleston, 1911; Lord Privy Seal in Asquith's Cabinet, 1915-16; President of the Air Board, 1916, Lord President of the Council, 1916-19, and member of the War Cabinet, 1916, in Lloyd George's Government; Leader of the House of Lords, 1916-24; cr. Marquess, 1921.

*The Life of Lord Curzon*, by the Rt Hon. the Earl of Ronaldshay, 3 vols. (1928).

*Curzon: The Last Phase*, by Harold Nicolson (1934).

DE GREY, *see* RIPON, first Marquess of

DELANE, John Thadeus (1817-1879); editor of *The Times*, 1841-77.

*John Thadeus Delane, Editor of The Times: His Life and Correspondence*, by Arthur Irwin Dasent, 2 vols. (1908).

DERBY, Edward George Geoffrey Smith Stanley, fourteenth Earl of (1799-1869); Whig M.P., 1822-35; Conservative M.P., 1835-44; Under-Secretary of State for the Colonies under Canning and Goderich; Chief Secretary for Ireland in Grey's Government, 1830-33; Secretary of State for the Colonies in Grey's Cabinet, 1833-4; resigned over Irish Church, 1834; joined Conservative Opposition, 1835; Colonial Secretary in Peel's Cabinet, 1841-5; cr. Lord Stanley of Bickerstaffe, 1844; resigned over Corn Laws, 1845, and became leader of Protectionists; attempted to form Conservative Government, 1851; succeeded to Earldom, 1851; Prime Minister, 1852, 1858-9, and 1866-8.

*The Earl of Derby*, by George Saintsbury (1892).

DEVONSHIRE, Spencer Compton Cavendish, eighth Duke of (1833-1908); Liberal M.P., 1857-86; Liberal Unionist M.P., 1886-91; became Marquess of Hartington, 1858; Under-Secretary of State for War in Palmerston's Government, 1863-6; Secretary of State for War in Russell's Cabinet, 1866; Postmaster-General in Gladstone's Cabinet, 1869-70; Chief Secretary for Ireland, 1870-4; led Liberal Party in House of Commons, 1875-80; Secretary of State for India, 1880-82, and for War, 1882-5, in Gladstone's Cabinet; refused to join Gladstone's third Government on account of Home Rule; leader of Liberal Unionist Party after 1886, in opposition to Gladstone, 1886, and in support of Salisbury, 1886-92; succeeded to Dukedom, 1891; Lord President of the Council in Salisbury's and Balfour's Cabinets, 1895-1903; resigned over free trade, 1903.

*The Life of Spencer Compton, Eighth Duke of Devonshire*, by Bernard Holland, C.B., 2 vols. (1911).

DILKE, Sir Charles Wentworth, second Baronet (1843-1911); Radical M.P., 1868-86, 1892-1911; Under-Secretary of State for Foreign Affairs in Gladstone's Government, 1880-82; President of the Local Government Board in Gladstone's Cabinet, 1882-5; out of Parliament and public life, 1886-92, owing to divorce court proceedings in 1886.

*The Life of the Rt Hon. Sir Charles W. Dilke, Bart., M.P.*, by Stephen Gwynn, M.P., and Gertrude M. Tuckwell, 2 vols. (1917).

DISRAELI, Benjamin, *see* BEACONSFIELD, first Earl of

EDWARD VII, King (1841-1910); Prince of Wales, 1841-1901; King, 1901-10.

*King Edward VII: A Biography*, by Sir Sidney Lee, 2 vols. (1925-7).

*The Influence of King Edward and Essays on Other Subjects*, by the Viscount Esher (1915).

ESHER, Reginald Baliol Brett, second Viscount (1852-1930); Liberal M.P., 1880-85; Secretary to the Office of Works, 1895-1902; Lieutenant and Deputy-Governor of Windsor Castle, 1901-28; Chairman of War Office Reconstitution Committee, 1904; Permanent Member of the Committee of Imperial Defence, 1905; Governor of Windsor Castle, 1928-30; private adviser to Edward VII and George V; co-editor of *Queen Victoria's Letters*, First Series.

*Journals and Letters of Reginald, Viscount Esher*, edited by Maurice V. Brett, 2 vols. (1934). [Quoted as *Esher Papers*.]

FAWCETT, Henry (1833-84); Liberal M.P., 1865-84; Postmaster-General in Gladstone's Government, 1880-84.

*Life of Henry Fawcett*, by Leslie Stephen (1885).

FITZROY, Sir Almeric William (1851-1934); Clerk of the Privy Council, 1898-1923.

*Memoirs*, by Sir Almeric Fitzroy, 2 vols. (1925).

FORSTER, William Edward (1818-1886); Liberal M.P., 1861-86; Under-Secretary of State for the Colonies in Palmerston's and Russell's Governments, 1865-6; Vice-President of the Council in Gladstone's Government, 1868-74; Chief Secretary for Ireland in Gladstone's Government, 1880-82; resigned over Irish policy, 1882.

*Life of the Rt Hon. William Edward Forster*, by T. Wemyss Reid, 2 vols. (1888).

FOWLER, Henry Harley, *see* WOLVERHAMPTON, first Viscount

FRENCH, Sir John, *see* YPRES

GATHORNE-HARDY, Gathorne, *see* CRANBROOK, first Viscount.

GEORGE, David Lloyd (b. 1863); Liberal M.P. since 1890; President of the Board of Trade in Campbell-Bannerman's Cabinet, 1905-8; Chancellor of the Exchequer, 1908-15, Minister of Munitions, 1915-16, and Secretary of State for War, 1916, in Asquith's Cabinets; Prime Minister, 1916-22.

*War Memoirs of David Lloyd George*, 4 vols. [in continuation] (1933-).

GLADSTONE, Herbert John, first Viscount (1854-1930); Liberal M.P., 1880-1910; Private Secretary to W. E. Gladstone, 1880-81; Lord of the Treasury in Gladstone's Government, 1881-5; Financial Secretary at the War Office in Gladstone's Government, 1886; Under-Secretary of State for Home Affairs, 1892-4, and First Commissioner of Works, 1894-5, in Gladstone's and Rosebery's Governments; Chief Whip to Liberal Party, 1899-1906; Secretary of State for Home Affairs in Campbell-Bannerman's and Asquith's Cabinets, 1905-10; cr. Viscount, 1910; Governor-General of South Africa, 1910-14.

*After Thirty Years*, by Lord Gladstone (1930).

GLADSTONE, William Ewart (1809-1898); Conservative M.P., 1832-45; Peelite M.P., 1847-65; Liberal M.P., 1865-95; Junior Lord of the Treasury and afterwards Under-Secretary of State for War in Peel's Government, 1834-5; Vice-President of the Board of Trade in Peel's Government, 1841-3; President of the Board of Trade in Peel's Cabinet, 1843-4; resigned over Maynooth grant, 1844; Secretary of State for the Colonies, 1845-6; Chancellor of the Exchequer in Aberdeen's Government, 1852-5; reappointed by Palmerston but resigned over Roebuck's motion, 1855; Chancellor of the Exchequer in Palmerston's Cabinet, 1859-66; Chancellor of the Exchequer and Leader of the House of Commons in Russell's Cabinet, 1866; Leader of Liberal Party, 1867-8; Prime Minister, 1868-74; resigned leadership of the Liberal Party, 1875; Prime Minister, 1880-5, 1886, and 1892-4; resigned over Estimates, 1894.

*The Life of William Ewart Gladstone*, by John Morley, 3 vols. (1903).

*Gleanings of Past Years*, by the Rt Hon. W. E. Gladstone, M.P., 6 vols. (1879).

*Mr Gladstone at the Board of Trade*, by Francis Edwin Hyde (1934).

*Gladstone*, by Francis Birrell (1933).

*The Queen and Mr Gladstone*, by Philip Guedalla, 2 vols. (1933).

*Gladstone and Palmerston*, edited by Philip Guedalla (1928).

GOSCHEN, George Joachim, first Viscount (1831-1907); Liberal M.P., 1863-85; Conservative M.P., 1886-1900; Vice-President of the Board of Trade in Russell's Government, 1865-6; Chancellor of the Duchy of Lancaster in Russell's Cabinet, 1866; President of the Poor Law Board in Gladstone's Cabinet, 1868-71; First Lord of the Admiralty in the same Cabinet, 1871-4; joined with Marquis of Hartington to form Liberal Unionist Party; Chancellor of the Exchequer in Salisbury's Cabinet after resignation of Lord Randolph Churchill, 1886-92; First Lord of the Admiralty in Salisbury's Cabinet, 1895-1900; cr. Viscount Goschen, 1900.

*The Life of George Joachim Goschen, first Viscount Goschen, 1831-1907*, by the Hon. Arthur D. Elliott, 2 vols. (1911).

GRAHAM, Sir James, second Baronet (1792-1861); Whig M.P., 1818-21, 1826-41; Conservative M.P., 1841-6; Peelite M.P., 1846-59; Liberal M.P., 1859-61; First Lord of the Admiralty in Grey's Cabinet, 1830-34; resigned with Stanley, 1834, and in opposition, 1834-41; Secretary of State for Home Affairs in Peel's Cabinet, 1841-6; First Lord of the Admiralty in Aberdeen's Cabinet, 1852-5; resigned from Palmerston's Government with other Peelites, 1855.

*Life and Letters of Sir James Graham*, by C. S. Parker, 2 vols. (1907).

GRANVILLE, Granville George Leveson-Gower, second Earl (1815-1891); Whig M.P., 1836-46; Under-Secretary of State for Foreign Affairs in Melbourne's Government, 1840-41; succeeded to Earldom, 1846; Vice-President of the Board of Trade, 1848, Paymaster of the Forces, 1848-51, and Secretary of State for Foreign Affairs, 1851-2, in Russell's Cabinet; Lord President of the Council, 1852-4, and Chancellor of the Duchy of Lancaster, 1854-8, in Aberdeen's and Palmerston's Cabinets; Leader of the Liberal Party in the House of Lords from 1855 to 1891; Lord President of the Council in Palmerston's and Russell's Cabinets, 1859-66; Secretary of State for the Colonies, 1868-70, and for Foreign Affairs, 1870-74 and 1880-85, in Gladstone's Cabinets; Secretary of State for the Colonies in Gladstone's Cabinet of 1886.

*The Life of Granville George Leveson-Gower, Second Earl Granville, K.G.*, by Lord Edmond Fitzmaurice, 2 vols. (1905).

GREVILLE, Charles Cavendish Fulke (1794-1865); Clerk of the Council, 1821-59.

*The Greville Memoirs: A Journal of the Reigns of King George IV and King William IV*, by the late Charles C. F. Greville. Edited by Henry Reeve, 3 vols. (1874).

*The Greville Memoirs (Second Part). A Journal of the Reign of Queen Victoria from 1837 to 1852*, by the late Charles C. F. Greville, 3 vols. (1885).

*The Greville Memoirs (Third Part). A Journal of the Reign of Queen Victoria, 1853 to 1859*, by the late Charles C. F. Greville, 2 vols. (1887).

*The Letters of Charles Grey and Henry Reeve*, edited by A. H. Johnson (1924).

GREY, Charles, second Earl (1764-1845); Whig M.P., 1786-1807; First Lord of the Admiralty, 1806; Secretary of State for Foreign Affairs, 1806-7; Prime Minister, 1830-34.

*Lord Grey of the Reform Bill*, by G. M. Trevelyan (1920).

GREY, Lieutenant-General the Hon. Charles, son of the above; Private Secretary to Prince Albert, 1849-61; Acting Private Secretary to Queen Victoria, 1862-7; Private Secretary to the Queen, 1867-70.

GREY OF FALLODON, Edward, first Viscount (1862-1932); Liberal M.P., 1885-1916; Under-Secretary of State for Foreign Affairs in Gladstone's and Rosebery's Governments, 1892-5; Secretary of State for Foreign Affairs in Campbell-Bannerman's and Asquith's Cabinets, 1905-16.

*Twenty-Five Years*, by Viscount Grey of Fallodon, 2 vols. (1925).

HAMILTON, Lord George Francis (1845-1927); Conservative M.P., 1868-1906; Under-Secretary of State for India, 1874-8, and Vice-President of the Council, 1878-80, in Disraeli's Government; First Lord of the Admiralty, 1885-6 and 1886-92, and Secretary of State for India, 1895-1903, in Salisbury's Cabinets.

*Parliamentary Reminiscences and Reflections*, by the Rt Hon. Lord George Hamilton, 2 vols. (1917, 1922).

HARCOURT, Sir William George Granville Venables Vernon (1827-1904); Liberal M.P., 1868-1904; Solicitor-General in Gladstone's Government, 1873-4; Home Secretary in Gladstone's Cabinet, 1880-85; Chancellor of the Exchequer in Gladstone's Cabinets, 1886 and 1892-4; Chancellor of the Exchequer and Leader of the House of Commons in Rosebery's Cabinet, 1894-5; resigned leadership of Liberal Party in House of Commons, 1898.

*The Life of Sir William Harcourt*, by A. G. Gardiner, 2 vols. (1923).



HARDY, Gathorne Gathorne-, *see* CRANBROOK, first Earl of

HARTINGTON, Marquis of, *see* DEVONSHIRE, eighth Duke of

HICKS BEACH, Sir Michael, *see* ST ALDWYN, first Viscount

HODGE, John (b. 1855); Labour M.P., 1906-23; trade union leader; Minister for Labour, 1916-17, and Minister of Pensions, 1917-19, in Lloyd George's Government.

*Workman's Cottage to Windsor Castle*, by the Rt Hon. J. Hodge (n.d.).

JAMES OF HEREFORD, Henry, first Baron (1828-1911); Liberal M.P., 1869-85; Liberal Unionist M.P., 1886-95; Solicitor-General in Gladstone's Government, 1873; Attorney-General in Gladstone's Governments, 1873-4 and 1880-85; joined Liberal Unionist Party in 1886; Chancellor of the Duchy of Lancaster in Salisbury's Cabinet, 1895-1903.

*Lord James of Hereford*, by Lord Askwith (1930).

JOYNSON-HICKS, Sir William, *see* BRENTFORD, first Viscount

KILBRACKEN, of Killegar, Sir Arthur Godley, first Baron (1847-1935); Private Secretary to Mr Gladstone, 1872-4 and 1880-82; Commissioner of Inland Revenue, 1882-3; Permanent Under-Secretary of State for India, 1883-1909.

*Reminiscences of Lord Kilbracken* (1931).

LABOUCHERE, Henry du Pré (1831-1912); diplomatic service, 1854-64; founder and editor of *Truth*, from 1876; Liberal M.P., 1876-1905.

*The Life of Henry Labouchere*, by Algar Labouchere Thorold (1913).

LANSDOWNE, Henry Charles Keith Petty-Fitzmaurice, fifth Marquess of (1845-1927); Lord of the Treasury, 1869-72 and Under-Secretary for War, 1872-4, in Gladstone's Government; Under-Secretary for India in Gladstone's Government, 1880; Governor-General of Canada, 1883-8; Governor-General of India, 1888-93; Secretary of State for War, 1895-1900, and for Foreign Affairs, 1900-5, in Salisbury's and Balfour's Cabinets; Minister without portfolio in Asquith's Cabinet, 1915-16.

*Lord Lansdowne: A Biography*, by Lord Newton (1929).

LANSDOWNE, Henry Petty-Fitzmaurice, third Marquess of (1780-1863); Whig M.P., 1803-9; Chancellor of the Exchequer, 1806-7;

Minister without portfolio, 1827-8; Lord President of the Council in Whig Cabinets, 1830-41, and in Russell's Cabinet, 1846-52; Minister without portfolio in Aberdeen and Palmerston Cabinets, 1852-63.

LAW, Andrew Bonar (1858-1923); Conservative M.P., 1900-23; Parliamentary Secretary of the Board of Trade in Balfour's Government, 1902-6; Leader of the Opposition, 1911-15; Secretary of State for the Colonies in Asquith's Cabinet, 1915-16; Chancellor of the Exchequer in Lloyd George's War Cabinet, 1916-18; Lord Privy Seal and Leader of the House of Commons in Lloyd George's Cabinet, 1919-21; Prime Minister, 1922-3.

*The Strange Case of Andrew Bonar Law*, by H. A. Taylor (n.d.).

LONG OF WRAXALL, Walter Hume, first Viscount (1854-1917), Conservative M.P., 1880-1921; Parliamentary Secretary to the Local Government Board in Salisbury's Government, 1886-92; President of the Board of Agriculture, 1895-1900, and of the Local Government Board, 1900-5, in Salisbury's and Balfour's Cabinets; Chief Secretary for Ireland, 1905-6; President of the Local Government Board in Asquith's Cabinet, 1915-16; Secretary of State for the Colonies in Lloyd George's Government, 1916-18; First Lord of the Admiralty in Lloyd George's Cabinet, 1919-21; cr. Viscount, 1921.

*Memoirs*, by Viscount Long of Wraxall (1923).

LOWE, Robert, *see* SHERBROOKE, first Viscount

MACAULAY, Thomas Babington, first Baron (1800-1859); Liberal M.P., 1830-32; various administrative offices in England and India, 1832-8; Liberal M.P., 1839-47 and 1852-6; Secretary of State for War in Melbourne's Government, 1839-41; cr. Lord Macaulay, 1857; the historian.

*The Life and Letters of Lord Macaulay*, by George Otto Trevelyan, M.P., 2 vols., new edition (1878).

MACDONALD, James Ramsay (b. 1866); Labour M.P., 1906-18 and 1922-31; National Labour M.P., 1931-5, and since 1936; Prime Minister and Secretary of State for Foreign Affairs, 1924; Prime Minister, 1929-35; Lord President of the Council since 1935.

MAGEE, William Connor (1821-1891); Dean of Cork, 1864-8; Bishop of Peterborough, 1868-91; Archbishop of York, 1891.

*The Life and Correspondence of William Connor Magee, Archbishop of York*, by John Cötter MacDonnell, D.D., 2 vols. (1896).

MALMESBURY, James Howard Harris, third Earl of (1807-1899); Conservative M.P., 1841; succeeded to Earldom, 1841; Protectionist Whip in House of Lords; Secretary of State for Foreign Affairs in Derby's Cabinets, 1852 and 1858-9; Lord Privy Seal in Derby's and Disraeli's Cabinets, 1866-8 and 1874-6.

*Memoirs of an Ex-Minister: An Autobiography*, by the Rt Hon. the Earl of Malmesbury, K.G., 2 vols (1884), new edition (1885). [References are to the new edition.]

MANNERS, Lord John, *see* RUTLAND, seventh Duke of

MELBOURNE, William Lamb, second Viscount (1779-1848); Whig M.P., 1806-12, 1816-29; Chief Secretary for Ireland, 1827-30; succeeded to Viscounty, 1829; Home Secretary in Grey's Cabinet, 1830-34; Prime Minister, 1834; "dismissed", 1834; Prime Minister, 1835-41.

*Memoirs of William Lamb, Second Viscount Melbourne*, by W. M. Torrens, new edition, revised by the author (1890).

*Lord Melbourne's Papers*, edited by Lloyd C. Sanders, 2nd edition (1890).

MELCHETT, Alfred Moritz Mond, first Baron (1868-1930); Liberal M.P., 1906-28; First Commissioner of Works, 1916-21 and Minister of Health, 1921-2, in Lloyd George's Cabinet; cr. Baron, 1928.

*Alfred Mond, first Lord Melchett*, by Hector Bolitho (1932).

MILNER, Sir Alfred, first Viscount (1854-1925); Private Secretary to Mr Goschen (Chancellor of the Exchequer), 1887-9; Chairman, Board of Inland Revenue, 1892-7; Governor of the Cape of Good Hope, 1897-1901; Governor of Transvaal and Orange River Colony, 1901-5, and High Commissioner for South Africa, 1897-1905; Minister without portfolio in Lloyd George's War Cabinet, 1916-18; Secretary of State for War in Lloyd George's Government, 1918-19; Secretary of State for the Colonies in Lloyd George's Cabinet, 1919-21; cr. Baron, 1901; Viscount, 1902.

*The Milner Papers*, edited by Cecil Headlam, 2 vols. (1932, 1933).

MOND, Sir Alfred, *see* MELCHETT, first Baron

MORLEY OF BLACKBURN, John, first Viscount (1838-1923); Liberal M.P., 1883-1908; Chief Secretary for Ireland in Gladstone's and Rosebery's Cabinets, 1886 and 1892-5; Secretary of State for India in Campbell-Bannerman's and Asquith's Cabinets, 1905-10; Lord President of the Council in Asquith's Cabinet, 1910-14; resigned on declaration of war; cr. Viscount, 1908.

*Recollections*, by John, Viscount Morley, 2 vols. (1917).

NORTON, Charles Bowyer Adderley, first Baron (1814-1905); Conservative M.P., 1841-78; became protectionist in 1846; Vice-President of the Council in Derby's Government, 1858-9; Under-Secretary of State for the Colonies in the Derby-Disraeli Government, 1866-8; President of the Board of Trade in Disraeli's Government, 1874-8; cr. Baron, 1878.

*Life of Lord Norton*, by William S. Childe-Pemberton (1909).

O'CONNELL, Daniel (1775-1847); "the Liberator"; Nationalist M.P., 1828-47; founded the "Order of Liberator".

*The Life and Letters of Daniel O'Connell, M.P.*, edited by his son, John O'Connell, M.P., 2 vols. (1846).

O'CONNOR, Thomas Power (1848-1929); Nationalist M.P., 1885-1929; journalist.

*Memoirs of an Old Parliamentarian*, by the Rt Hon. T. P. O'Connor, 2 vols. (1929).

OXFORD AND ASQUITH, Herbert Henry Asquith, first Earl of (1852-1928); Liberal M.P., 1886-1918 and 1920-24; Secretary of State for Home Affairs in Gladstone's and Rosebery's Cabinets, 1892-5; Chancellor of the Exchequer in Campbell-Bannerman's Cabinet, 1905-8; Prime Minister, 1908-16; cr. Earl, 1925.

*Memories and Reflections*, by the Earl of Oxford and Asquith, 2 vols (1926).  
*Fifty Years of Parliament*, by the Earl of Oxford and Asquith, 2 vols. (1928).  
*Life of Herbert Henry Asquith, Lord Oxford and Asquith*, by J. A. Spender and Cyril Asquith, 2 vols. (1932).

PALMERSTON, Henry John Temple, third Viscount, in the peerage of Ireland (1784-1865); succeeded to Viscounty, 1802; Tory M.P., 1807-30; Whig and Liberal M.P., 1830-65; Junior Lord of the Admiralty, 1808-9; Secretary at War, 1809-28; Secretary of State for Foreign Affairs in Grey's, Melbourne's and Russell's Cabinets, 1830-34, 1835-41, 1846-51; dismissed by Russell, 1851 and had

his "tit-for-tat"; Home Secretary in Aberdeen's Cabinet, 1852-5; Prime Minister, 1855-8, 1858-65.

*The Life of Henry John Temple, Viscount Palmerston*, by the Rt.Hon. Sir Henry-Lytton Bulwer, G.C.B., M.P. (Lord Dalling), 3 vols. (1870-74).

*The Life of Henry John Temple, Viscount Palmerston*, 1846-1865, by the Hon. Evelyn Ashley, M.P., 2 vols. (1876).

*Gladstone and Palmerston*, by Philip Guedalla (1928).

*Palmerston*, by Philip Guedalla (1926).

PANMURE, Fox Maule, second Baron, subsequently eleventh Earl of Dalhousie in the peerage of Scotland; Liberal M.P., 1835-52; Under-Secretary of State in Melbourne's Government, 1835-41; Secretary at War in Russell's Government, 1846-52; Secretary of State for War in Palmerston's Government, 1855-8; succeeded to Barony, 1852; and to Earldom, 1860.

*The Panmure Papers*, edited by Sir George Douglas, Bart., M.A., and Sir George Dalhousie Ramsay, C.B., 2 vols. (1908).

PEEL, Sir Robert, second Baronet (1788-1850); Tory M.P., 1809-50; Under-Secretary of State for War and Colonies, 1810-12; Chief Secretary for Ireland, 1812-18; Home Secretary, 1822-7; Home Secretary and Leader of the House of Commons in Wellington's Cabinet, 1828-30; Prime Minister, 1834 and 1841-6.

*Memoirs of the Rt Hon. Sir Robert Peel, Bart., M.P.*, published by the Trustees of his Papers, Lord Mahon (Earl Stanhope) and the Rt Hon. Edward Cardwell, M.P., 2 vols. (1856).

*Sir Robert Peel from his Private Papers*, edited by Charles Stuart Parker, 3 vols. (1891). [Quoted as *Peel Papers*.]

*Peel and the Conservative Party*, by George Kitson Clark (1929).

*Sir Robert Peel*, by the Earl of Rosebery [in *Miscellanies*, vol. 1].

PONSONBY, General Sir Henry (1825-1895); Private Secretary to Queen Victoria, 1870-95.

REDMOND, John Edward (1856-1918); Nationalist M.P., 1881-1918; supported Parnell, 1890, and led Parnellite group after 1891; Leader of re-united Nationalist Party, 1900-18.

*The Life of John Redmond*, by Denis Gwynn (1932).

REEVE, Henry (1813-1895); staff of *The Times*, 1840-55; editor, *Edinburgh Review*, 1855-95; editor of Greville's *Memoirs* (q.v.); Registrar of the Privy Council.

*Memoirs of the Life and Correspondence of Henry Reeve, C.B., D.C.L.*, by John Knox Laughton, 2nd edition, 2 vols. (1893).

*The Letters of Charles Greville and Henry Reeve*, 1836-1865, edited by the Rev. A. H. Johnson, M.A. (1924).

RIPON, George Frederick Samuel Robinson, first Marquis of (1827–1909); son of the first Viscount Goderich (afterwards Earl of Ripon), the Prime Minister; known as Viscount Goderich, 1833–59; Liberal M.P., 1853–9; succeeded as Earl de Grey and Earl of Ripon, 1859; Under-Secretary of State for War, for India, and for War again, in Palmerston's Government, 1859–63; Secretary of State for War in Palmerston's and Russell's Cabinets, 1863–6; Secretary of State for India in Russell's Cabinet, 1866; Lord President of the Council in Gladstone's Cabinet, 1868–73; cr. Marquis, 1871; Governor-General of India, 1880–84; First Lord of the Admiralty in Gladstone's Cabinet, 1886; Secretary of State for the Colonies in Gladstone's and Rosebery's Cabinets, 1892–5; Lord Privy Seal and Leader of the House of Lords in Campbell-Bannerman's Cabinet, 1905–8.

*Life of the first Marquess of Ripon*, by Lucien Wolf, 2 vols. (1921).

ROSEBERY, Archibald Philip Primrose, fifth Earl of (1847–1929); succeeded to Earldom, 1868; Under-Secretary of State for Home Affairs in Gladstone's Government, 1881–3; Lord Privy Seal and First Commissioner of Works in Gladstone's Cabinet, 1885; Secretary of State for Foreign Affairs in Gladstone's Cabinets, 1886 and 1892–4; Prime Minister, 1894–5.

*Lord Rosebery*, by the Marquess of Crewe, 2 vols. (1931).

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RUSSELL, John, first Earl (1792–1878); known as Lord John Russell for most of his political career; Whig M.P., 1813–61; Paymaster-General of the Forces in Grey's Cabinet, 1831–4; Home Secretary and Leader of the House of Commons in Melbourne's Cabinet, 1835–9; Secretary of State for the Colonies, 1839–41; Prime Minister, 1846–52; Foreign Secretary and Leader of the House of Commons in Aberdeen's Cabinet, 1852–3, continuing as Minister without portfolio until 1854, when he became Lord President of the Council; resigned 1855 on Roebuck's motion; Secretary of State for the Colonies in Palmerston's Cabinet, 1855; Foreign Secretary in Palmerston's Cabinet, 1859–65; cr. Earl Russell, 1861; Prime Minister on death of Palmerston, 1865–6.

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*Selections from Speeches of Earl Russell and from Despatches*, 2 vols. (1870).

*An Essay on the History of the English Government and Constitution*, by John, Earl Russell (1865).

RUTLAND, [Lord] John James Robert Manners, seventh Duke of Rutland (1818-1906); Conservative M.P., 1841-88; succeeded to the Dukedom, 1888; one of Disraeli's "Young England Party"; First Commissioner of Works in Derby's Cabinets, 1852, 1858, and 1866-8; Postmaster-General in Disraeli's Cabinet, 1874-80; Chancellor of the Duchy of Lancaster in Salisbury's Cabinet, 1886-92.

*Lord John Manners and His Friends*, by Charles Whibley, 2 vols. (1925).

ST ALDWYN, Sir Michael Edward Hicks Beach, first Earl (1837-1916); Conservative M.P., 1864-1906; Parliamentary Secretary to the Poor Law Board and afterwards Under-Secretary of State for Home Affairs in Disraeli's Government, 1868; Chief Secretary for Ireland in Disraeli's Government, 1874-8, entering Cabinet in 1876; Secretary of State for the Colonies in Lord Beaconsfield's Cabinet, 1878-80; Chancellor of the Exchequer and Leader of the House of Commons in Salisbury's Cabinet, 1885; Chief Secretary for Ireland, 1886-7, and President of the Board of Trade, 1888-92, in Salisbury's Cabinet; Chancellor of the Exchequer in Salisbury's Cabinet, 1895-1902; cr. Viscount, 1906, and Earl, 1915.

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SALISBURY, Robert Arthur Talbot Gascoyne-Cecil, third Marquess of (1830-1903); Conservative M.P., 1853-68 (as Lord Robert Cecil until 1865 and as Viscount Cranborne, 1865-8); succeeded to Marquisate, 1868; Secretary of State for India in Derby's Cabinet, 1866-7, resigning over Reform Bill; Secretary of State for India, 1874-8, and for Foreign Affairs, 1878-80, in Disraeli's Cabinet; Leader of Conservative Party in House of Lords after death of Beaconsfield; Prime Minister and Foreign Secretary, 1885-6, 1886-92, and 1895-1900; Prime Minister and Lord Privy Seal, 1900-2.

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SELBORNE, Sir Roundell Palmer, first Earl of (1812-1895); Conservative M.P., 1847, but gradually became Liberal, and Liberal M.P. until 1872; Solicitor-General, 1861-3, and Attorney-General, 1863-6, in Palmerston's and Russell's Governments; Lord Chancellor in Gladstone's Cabinets, 1872-4 and 1880-85; cr. Baron, 1872, and Earl, 1882; opposed Home Rule in 1886.

*Memorials*, by Roundell Palmer, Earl of Selborne, 4 vols. (1896-98).

SHERBROOKE, Robert Lowe, first Viscount (1811-1892); Liberal M.P., 1852-80; Joint Secretary of the Board of Control in Aberdeen's Government, 1852-5; Vice-President of the Board of Trade and Paymaster-General, 1855-8, and Vice-President of the Council, 1859-64, in Palmerston's Governments; led the "Cave of Adul-lam" against the Reform Bill of 1866; Chancellor of the Exchequer in Gladstone's Cabinet, 1868-73, and Home Secretary, 1873-4; cr. Viscount, 1880.

*Life and Letters of the Rt Hon. Robert Lowe, Viscount Sherbrooke*, by A. Patchett Martin, 2 vols. (1893).

SMITH, Frederick Edwin, *see* BIRKENHEAD, first Earl of

SMITH, William Henry (1825-1891); Conservative M.P., 1868-91; First Lord of the Admiralty in Disraeli's Cabinet, 1877-80; First Lord of the Treasury and Leader of the House of Commons in Salisbury's Cabinet, 1886-91.

*Life and Times of the Rt Hon. William Henry Smith, M.P.*, by Sir Herbert Maxwell, Bart., M.P., 2 vols. (1893).

SNOWDEN, Philip, first Viscount (b. 1864); Labour M.P., 1906-18 and 1922-31; Chancellor of the Exchequer in MacDonald's Cabinets, 1924, and 1929-32; cr. Viscount, 1931.

*An Autobiography*, by Philip, Viscount Snowden, 2 vols. (1934).

SOMERSET, Edward Adolphus Seymour, twelfth Duke of (1804-1885); Whig M.P., 1830-55; Junior Lord of the Treasury, 1835-9, Secretary to Board of Control, 1839-41, and Under-Secretary of State for Home Affairs, 1841, in Melbourne's Government; First Commissioner of Works in Russell's Cabinet, 1851-2; succeeded to Dukedom, 1855; First Lord of the Admiralty in Palmerston's and Russell's Cabinets, 1859-66.

*Letters, Remains, and Memoirs of Edward Adolphus Seymour, twelfth Duke of Somerset*, edited by W. H. Matlock and Lady Gwendolen Ramsden (1893).

SPENCER, John Charles, third Earl (1782-1845); known for much of his public life as Viscount Althorp; Whig M.P., 1806-34; Leader of the Whigs in the House of Commons, 1830, and Chancellor of the Exchequer and Leader of the House of Commons in Grey's Cabinet, 1830-34; succeeded to Earldom, 1834, with the result that the Government was "dismissed" by William IV.

*Memoir of John Charles, Viscount Althorp, third Earl Spencer*, by Sir Denis le Marchant, Bart. (1876).



STAMFORDHAM, Lieutenant-Colonel Sir Arthur John Bigge, first Baron (1849-1931); Assistant-Private Secretary to Queen Victoria, 1880-95; Private Secretary to the Queen, 1895-1900; Private Secretary to King George V as Prince of Wales and King, 1901-30.

STANLEY, Arthur Penrhyn (1815-1881); Dean of Westminster, 1864-81.

*The Life and Correspondence of Arthur Penrhyn Stanley*, by Rowland E. Prothero, 2 vols. (1893).

STANLEY, Edward George Geoffrey Smith, known as Lord Stanley, *see* DERBY, fourteenth Earl of

STOCKMAR, Christian Friedrich, Baron von (1787-1863); adviser to Coburg family.

*Memoirs of Baron Stockmar*, by his son, Baron E. von Stockmar, 2 vols. (1872).

TAIT, Archibald Campbell (1811-1882); Dean of Carlisle, 1849-56; Bishop of London, 1856-69; Archbishop of Canterbury, 1869-82.

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TAYLOR, Sir Herbert (1775-1839); Private Secretary to the Duke of York, George III, Queen Charlotte, and William IV.

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TEMPLE, Frederick (1821-1902); Bishop of Exeter, 1869-85; Bishop of London, 1885-96; Archbishop of Canterbury, 1896-1902.

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THOMSON OF CARDINGTON, Christopher Birdwood, first Baron (1875-1930); cr. 1924; Secretary of State for Air in MacDonald's Cabinets, 1924 and 1929-30.

*Lord Thomson of Cardington*, by Princess Marthe Bibesco (1932).

TREVELYAN, Sir George Otto (1838-1928); Liberal M.P., 1865-97; Civil Lord of the Admiralty in Gladstone's Government, 1868-74; Secretary of the Admiralty, 1880-82, and Chief Secretary for Ireland, 1882-4, in Gladstone's Government; Chancellor of the Duchy of Lancaster, 1884-5, and Secretary for Scotland 1886 and 1892-95, in Gladstone's and Rosebery's Cabinets.

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VICTORIA, Queen (1819-1901); succeeded, 1837.

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[See also under GLADSTONE and PALMERSTON.]

WELLINGTON, Arthur Wellesley, first Duke of (1769-1852); Tory M.P., 1790-95, 1806-9; Chief Secretary for Ireland, 1807-9; cr. Viscount, 1809, Marquess, 1812; Field-Marshal, 1813; cr. Duke, 1814; Master General of the Ordnance in the Cabinet, 1818-27; Prime Minister, 1828-30, Prime Minister and Home Secretary, 1834, on "dismissal" of Melbourne and while Peel was posting home from Rome, Foreign Secretary in Peel's Cabinet, 1834; Leader of Conservative Opposition in House of Lords, 1835-41; Minister without portfolio in Peel's Cabinet, 1841-6; Commander-in-Chief, 1827-8, and 1842-52.

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*The Life of Wellington*, by W. H. Maxwell, 2 vols. (1839).

WEST, Sir Algernon Edward (1832-1921); Private Secretary to Gladstone, 1868-72; Commissioner of Inland Revenue, 1872-92, being Chairman of the Board, 1881-92.

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WILSON, Field-Marshal Sir Henry Hughes, Bt. (1864-1922); Director of Military Operations, 1910-14; Assistant Chief of General Staff to General French, 1914; Chief of Imperial General Staff, 1918-22.

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WOLVERHAMPTON, Henry Hartley Fowler, first Viscount (1830-1911); Liberal M.P., 1880-1908; Under-Secretary of State for Home Affairs, 1884-5, and Financial Secretary to the Treasury, 1886, in Gladstone's Governments; President of the Board of Trade in Gladstone's Cabinet, 1892-4, and Secretary of State for India in Rosebery's Cabinet, 1894-5; Chancellor of the Duchy of Lancaster

in Campbell-Bannerman's Cabinet, 1905-8; cr. Viscount, 1908; Lord President of the Council in Asquith's Cabinet, 1908.

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WYNDHAM, George (1863-1913); private secretary to Mr Balfour, 1887; Conservative M.P., 1889-1913; Under-Secretary of State for War in Salisbury's Government, 1898-1900; Chief Secretary for Ireland in Salisbury's and Balfour's Cabinets, 1900-5.

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YPRES, Field-Marshal John Denton Pinkstone French, first Earl of (1852-1925); Chief of Imperial General Staff, 1911-14; Commander-in-Chief in France, 1914-15; Commander-in-Chief in the United Kingdom, 1915-18; Lord-Lieutenant of Ireland, 1918-21; cr. Viscount, 1915; Earl, 1921.

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